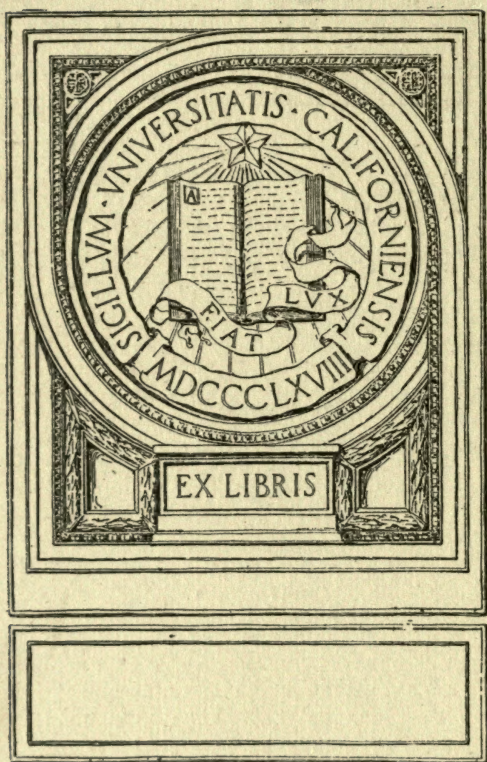


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INSURANCE LAW

OF NEW YORK

Being Chapter 28 of the Consolidated Laws

and

Chapter 33 of 1909

Including all amendments of 1916, with notes and annotations

By

AMASA J. PARKER, Jr.

of Albany, N. Y.

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Insurance Law of New York.

CHAPTER 33 OF 1909.

AN ACT in relation to insurance corporations, constituting chapter twenty-eight of the consolidated laws.

APPROVED by the Governor February 17, 1909. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

CHAPTER 28 OF THE CONSOLIDATED LAWS.

INSURANCE LAW.

- ARTICLE 1. General provisions. (§§ 1-67.)
2. Life, health and casualty insurance corporations. (§§ 70-108.)
 3. Fire insurance corporations. (§§ 110-149c.)
 4. Marine insurance corporations. (§§ 150-162.)
 5. Title and credit guaranty corporations. (§§ 170-183.)
 - 5a. Mutual Employers' Liability and Workmen's Compensation Corporations. (§§ 185-194.)
 6. Life or casualty insurance corporations upon the co-operative or assessment plan. (§§ 200-220.)
 7. Fraternal benefit societies. (§§ 230-249.)
 8. Corporations for insurance of domestic animals. (§§ 250-254.)
 9. Co-operative Fire Insurance Corporations. (§§ 260-269.)
 10. Lloyds and inter-insurers. (§§ 300-305.)
 - 10a. Mutual fire insurance corporations. (§§ 320-328.)
 - 10b. Mutual automobile casualty insurance corporations. (§§ 340-348.)
 11. Laws repealed; construction; when to take effect. (§§ 360-361.)

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SECTION 1. Short title and application.

This chapter shall be known as the "Insurance Law," and shall be applicable to all persons, partnerships, corporations, associations and societies and to associations operating as Lloyds, inter-insurers or individual underwriters, authorized by law to make insurances.

Source.—Former § 1 (L. 1892, chap. 690).

Amended by L. 1912, chap. 265.

§ 2. The superintendent of insurance.

There shall continue to be a separate and distinct department charged with the execution of the laws relating to insurance, to

be known as the insurance department, the chief officer of which shall be the superintendent of insurance, who shall be appointed by the governor, by and with the advice and consent of the senate, and, unless appointed to fill a vacancy, shall hold his office for the term of three years, beginning on the first day of July succeeding his appointment, and ending on the first day of July in the third calendar year thereafter; provided that the term of office of the superintendent appointed to succeed the superintendent who was in office on the first day of January, nineteen hundred and twelve, shall continue until the first day of July, nineteen hundred and fifteen. A vacancy in such office shall be filled only for the balance of the unexpired term. The superintendent shall receive an annual salary of ten thousand dollars, which shall be in full of all services performed by him in any capacity.

The superintendent and his deputies shall take and subscribe and file in the office of the secretary of state the constitutional oath of office within fifteen days from the time of notice of their appointments respectively. The superintendent shall, within the same time, give an official undertaking in the sum of twenty-five thousand dollars, with two good sureties to be approved by the comptroller. Neither the superintendent nor any deputy nor employee shall be directly or indirectly interested in any insurance corporation, except as an ordinary policy-holder.

Source.—Former § 2, as amended by L. 1906, chap. 326; originally revised from L. 1859, chap. 366, § 1, § 2, as amended by L. 1873, chap. 593, § 5, and L. 1868, chap. 732, § 5.

Amended by L. 1912, chap. 265.

Letters of the superintendent are not public documents; access to them is discretionary with the superintendent. Attorney-General Rep., March 1, 1897.

During the absence and inability of the superintendent, the deputy becomes at once acting superintendent and his acts are to all intents and purposes those of the superintendent and he is entitled to the salary of that office while he so continues to act. *People ex rel. Church v. Hopkins*, 55 N. Y., 74.

§ 3. Offices for insurance department.

There shall be assigned to the superintendent of insurance, by the trustees of the capitol, suitable offices in the city of Albany

for conducting the business of the insurance department. The superintendent shall, from time to time, furnish the necessary furniture, stationery, fuel, lights and other proper conveniences for the transaction of such business, the expenses of which, and the rent of such offices, if any, shall be paid on the certificate of the superintendent and the warrant of the comptroller.

Source.—Former § 3, originally revised from L. 1859, chap. 366, § 6, as amended by L. 1877, chap. 423.

§ 4. Seal and certificate, when evidence.

The seal of office now used by the superintendent of insurance shall continue to be the seal of his office and may be renewed whenever necessary. Every certificate, assignment, conveyance or other paper executed by him in pursuance of any authority conferred by law and sealed with such seal of office, shall be received as evidence and may be recorded in the proper recording offices in the same manner and with the like effect as a deed regularly acknowledged or proved before an officer authorized by law to take the proof or acknowledgment of deeds.

Source.—Former § 4, originally revised from L. 1859, chap. 366, § 4.

§ 5. Deputy superintendent and clerks.

The superintendent of insurance shall employ from time to time the necessary clerks to discharge such duties and to be paid such compensation as he shall prescribe. He shall appoint one or more of such clerks to be his deputies. In case of the absence of the superintendent or his inability from any cause to discharge the powers and duties of his office, the powers and duties of the office shall devolve upon his first deputy; and in the absence of both the superintendent and his first deputy or their inability from any cause to discharge the powers and duties of the office, the powers and duties of the office shall devolve upon his second deputy.

The compensation of the clerks of the department shall be paid to them monthly on the certificate of the superintendent and on the warrant of the comptroller.

Source.—Former § 5, originally revised from L. 1859, chap. 366, § 2, as amended by L. 1873, chap. 593.

Service of a summons and complaint on a deputy is good service on the superintendent in the absence of the superintendent. *Quinn v. Royal Ins. Co.*, 81 Hun, 207.

During the absence and inability of the superintendent, the deputy becomes at once acting superintendent and his acts are to all intents and purposes those of the superintendent and he is entitled to the salary of that office while he so continues to act. *People ex rel. Church v. Hopkins*, 55 N. Y., 74.

During a vacancy in the office of superintendent, the deputy has power to bring an action as acting superintendent. *Smyth v. Lombardo*, 15 Hun, 415.

§ 6. Fees.

Every corporation or person to whom this chapter shall be applicable shall pay the following fees to the superintendent, unless remitted by him. For filing the declaration and certified copy of the charter required by law, thirty dollars. For filing the annual report required by law, twenty dollars. For each certificate of authority and certified copy thereof, and for each certificate of deposit, valuation or compliance, not exceeding five dollars. For every copy of any paper filed in his office, ten cents per folio; and for affixing the official seal on such copy and certifying the same, one dollar. All fees, perquisites and moneys received by the insurance department, or any officer thereof, shall be paid into the state treasury as required by the state finance law.

Source.—Former § 6, as amended by L. 1893, chap. 725; originally revised from L. 1859, chap. 366, § 7, as amended by L. 1871, chap. 709; L. 1853, chap. 466, § 27; L. 1853, chap. 463, § 16; L. 1865, chap. 328, § 3; L. 1868, chap. 732, § 5; L. 1883, chap. 175, § 15; L. 1885, chap. 538, § 7; L. 1889, chap. 454, § 9.

Amended by L. 1913, chap. 304.

Note.—The purpose of the amendment of this section by chapter 304 of 1913 was to compel payment of all receipts of the department and other receipts to the State Treasurer.—Ed.

§ 7. Expenses of examinations.

The expense of every examination or other investigation of the affairs of an insurance corporation, pursuant to the authority conferred by the provisions of this chapter, shall be borne and paid by the corporation so examined, unless remitted by the superintendent.

No charge shall be made for any examination of an insurance corporation by the superintendent or his deputy personally, or by one or more of the regular clerks of the department except for necessary traveling and other actual expenses. All charges for making any examination and all charges against an insurance corporation by an attorney or appraiser of the department shall be presented in the form of an itemized bill approved by the superintendent, audited by the comptroller, and paid on his warrant drawn in the usual manner on the state treasurer, to the person making the examination.

The corporation examined on receiving a certified copy of such bill so approved, audited and paid, shall repay the amount thereof to the superintendent of insurance, to be by him paid into the state treasury to replace the money drawn out as above provided. No insurance corporation, or any officer or director thereof, shall either directly or indirectly pay by way of gift, credit or otherwise, any sum of money or other valuable thing to the superintendent or any clerk or employe of the insurance department or any examiner for extra service or for purposes of legislation, or by way of a loan, or on any other pretense whatsoever.

Source.—Former § 7, as amended by L. 1898, chap. 171; L. 1906, chap. 326; originally revised from L. 1853, chap. 463, § 17, as amended by L. 1879, chap. 161; L. 1859, chap. 366, § 2, as amended by L. 1873, chap. 593.

Amended by L. 1909, chap. 301, and L. 1910, chap. 634.

The approval of a bill by the superintendent is not conclusive upon the comptroller, but the latter has power to examine and pass upon and readjust a bill approved by the superintendent and presented to him for audit and payment as prescribed in this section. *Matter of Murphy*, 24 Hun, 592, aff'd 86 N. Y., 627.

§ 8. Expenses of department; how defrayed.

Repealed by chap. 301 of 1909.

§ 9. Certificate of authorization of superintendent.

No corporation, nor any individual, as principal, shall transact the business of insurance within this state without the certificate of the superintendent of insurance, certifying under his hand and official seal that such corporation or individual has complied with all the requirements of law to be observed by such corpora-

tion or individual and that such corporation or individual is authorized to transact the business of insurance specified therein in this state. Such certificate shall be recorded in the office of the superintendent in a book to be kept by him for that purpose. No corporation or individual shall transact in this state any insurance business not specified in the certificate of authority granted by the superintendent. The superintendent may refuse to issue any such certificate to a domestic or foreign corporation, if, in his judgment, such refusal will best promote the interests of the people of the state. Nothing in this section contained shall apply to any insurance company organized prior to the first day of October, eighteen hundred and ninety-two, under any general or special law of this state and carrying on business on said date, but every such corporation is hereby recognized as an existing corporation and is hereby authorized to continue as such corporation and to continue such business until the legislature shall otherwise provide, subject to such of the provisions of this chapter as are made applicable to such corporations.

Source.—Former § 9, as amended by L. 1893, chap. 725; originally revised from L. 1849, chap. 308, § 11; L. 1853, chap. 463, § 7; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555; L. 1871, chap. 888, § 5; L. 1883, chap. 175, § 3, as amended by L. 1887, chap. 285.

Amended by L. 1910, chap. 634.

Note.—The purpose of the amendment of 1910 was to give the superintendent power to refuse a certificate of authority not only to a foreign corporation, but to a domestic corporation, if, in his judgment, such refusal would best promote the interests of the State.—Ed.

See § 1192, Penal Law. Acting as agent of life insurance corporation without certificate of authority.

See § 1197, Penal Law. Misconduct of officers agents of co-operative insurance companies.

See § 1198, Penal Law. Agents issuing policy after revocation of certificate to do business.

CONDITIONS.—A state has the right to impose conditions, not in conflict with the constitution or the laws of the United States, to the transaction of business within its territory by an insurance company chartered by another state, or to exclude such company from the territory, or, having given a license, to revoke it with or without cause. *Doyle v. Continental Ins. Co.*, 94 U. S., 535.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law, a foreign corporation includes one incorporated under the laws of another state of the United States. *In re Penn. Fire Ins. Co.*, Attorney-General Rep., 1895, page 56.

Certain charitable associations organized under chap. 256 of 1881 are required to file the certificate provided by this section. *Supreme Council of Chosen Friends v. Fairman*, 10 Abb. N. C., 162.

LODGE SYSTEM.—The fraternal insurance associations organized on the lodge system which are exempted from the operations of section 9 are such fraternal insurance associations organized on the lodge system as are provided for in article 7 of the insurance law. *Attorney-General Rep.*, 1906, page 553.

BURIAL CONTRACTS.—Corporations issuing contracts to furnish burials for contract holders upon payment of stipulated sum at execution of contract, and a like sum upon death of the contract holder, are "transacting the business of insurance." *In re Barrett Co.*, *Attorney-General Rep.*, Feb. 13, 1903, page 258; Nov. 19, 1902; Oct. 17, 1903, and March 5, 1908.

A corporation, contracting with families or individuals whereby for an annual sum, the company agrees to supply a coffin, etc., would be transacting the business of insurance. *Ruling Ins. Dept.*, Aug. 4, 1911.

The adjustment of a loss by an agent is not transacting business in this state. *People ex rel. McCall v. Gilbert*, 44 Hun, 522.

If a foreign corporation not authorized to transact business in this state makes out policies in Jersey City upon applications received in New York and delivers the policies in New York, such transactions constitute doing business in that state and such acts are unlawful. *Employers' Assur. Corp. v. Employers' Ins. Co.*, 61 Hun, 552; 41 St. Rep., 390; 16 N. Y. Supp., 397.

A citizen of this state is not prohibited from applying for insurance to a foreign corporation which is not authorized to transact business in this state, nor from receiving the policy here by mail; but an agent of the foreign company is prohibited from making the delivery. *People v. Imlay*, 20 Barb., 68.

A trust company, which is not an insurance company, cannot execute a contract which is in the nature of insurance or transact the business of insurance in this State. *Attorney-General Rep.*, Dec. 11, 1902.

VALIDITY OF ORGANIZATION.—Persons who have given premium notes to a mutual insurance company, and have thus become members of the corporation, are not in a condition to assail the organization of the company. *Cooper v. Shaver*, 41 Barb., 151.

If the company has, in form, a charter authorizing it to act as a body corporate, and is in fact in the exercise of corporate powers at the time of taking a promissory note from an individual, it is, as to him and all third persons, a corporation *de facto*, and the validity of its corporate existence can only be tested by proceedings in behalf of the people. *Jones v. Dana*, 24 Barb., 394.

ORGANIZATION.—One who has contracted with an insurance company as an existing corporation, and has executed a promissory note to it, and received a policy of insurance from it, of which he has enjoyed the benefit and protections, is not in a condition to object to the regularity and validity of the organization of the company. *Hyatt v. Esmond*, 37 Barb., 601.

Parties who have contracted with a corporation as such cannot afterwards raise the objection that the company was not legally incorporated; if there are any defects in the organization of a company, they will be cured by a subsequent act of the legislature, which treats it as an existing corporation and changes its name. *White v. Coventry*, 29 Barb., 305.

DISCRETION OF SUPERINTENDENT.—Under the provisions of chap. 593 of 1873, the superintendent had the right to refuse to permit any foreign corporation to transact business in this state, whenever, in his judgment, such refusal to admit it would best promote the interests of the people; a similarity of name as would likely lead to confusion between the business of a foreign corporation and another company is a sufficient ground for refusal. *Employers' Assur. Corp. v. Employers' Ins. Co.*, 78 Hun, 446.

The superintendent of the insurance department may, in his discretion, issue to a foreign credit guarantee insurance company a certificate authorizing it to transact business in this state. *Attorney-General Rep.*, 1892, page 375.

The superintendent has the right to refuse to renew the license of a foreign company unless it complies with the statute. *In re General Acc. Ins. Co.*, *Attorney-General Rep.*, Jan. 8, 1906.

Where the receiver of an insurance company, dissolved by an order of the court, entered into a contract with a foreign insurance company for reinsurance, which contract was approved by an order of the court, the foreign corporation is estopped from alleging, in its own defense, that the contract was made in violation of the laws of this state. *Jay v. De Groot*, 2 Hun, 205.

An insurance policy is not void because, by its terms, it extends beyond a time limited by the charter of the company for its corporate existence. *Huntley v. Merrill*, 32 Barb., 626.

An agreement for reinsurance with a foreign unauthorized company is not void if executed. *Cassery v. Manners*, 9 Hun, 695.

Where the president of an insurance company, knowing that the statutory prerequisites to its organization have not been complied with, issues and signs policies and places them in the hands of agents, who, to his knowledge, induce people to take them, representing that the laws authorizing the company to transact business have been complied with, he is guilty of a fraud, and an action lies against him to recover back the money so paid. *Belding v. Floyd*, 17 Hun, 208.

DEMURRER.—A complaint in an action brought by a foreign insurance company is not demurrable for its failure to show that it has been duly authorized to do business in this state, the failure to comply being a matter of defense. *Thompson v. Colonial Assur. Co.*, 33 Misc., 37.

POWERS.—An insurance company, in the absence of a restriction imposed by statute, have the power necessary to enable them to transact the business authorized by their charter; they may borrow money for the purposes of their business, and for like purposes may procure sureties whose contracts of indemnity are valid, the same as if made with individuals. *Hope Ins. Co. v. Perkins*, 38 N. Y., 404.

DEPOSIT.—Foreign life insurance companies seeking to do business here must deposit with the superintendent of insurance at least \$200,000, but are not required to have their capital fully paid in. *In re North Amer. Life Ins. Co.*, *Attorney-General Rep.*, 1900, page 178.

MANDAMUS.—Mandamus will not lie to compel the superintendent to do an act regarding the admission to this state of a foreign insurance company. *People ex rel. Equitable Ins. Co. v. Fairman*, 12 Abb. N. C., 268.

Mandamus will not lie to compel the superintendent to issue a renewal certificate to a foreign company. *People ex rel. Hartford Ins. Co. v. Fairman*, 12 Abb. N. C., 252.

AGENTS.—Corporations may act as agents for insurance companies when expressly authorized so to do by their charters, and not otherwise. In *re Carpenter & Co.*, Attorney-General Rep., 1893, page 369.

§ 10. Certificate of attorney-general; corporate names; number of directors.

When application is made to the superintendent of insurance by any persons desiring to become incorporated as an insurance corporation, or for authority to transact the business of insurance in this state, under or pursuant to any declaration and charter presented for filing in the insurance department, or any amended declaration or charter required by law to be filed, or to be approved by the superintendent, the superintendent shall not file such declaration and charter or grant such certificate of authority until such declaration and charter shall have been examined by the attorney-general; and certified by him to the superintendent to be in accordance with the requirements of law. No certificate of authority to transact the business of insurance in this state, shall be granted by the superintendent of insurance to any insurance corporation hereafter applying therefor, if such corporation has the same name as another corporation authorized to transact such business in this state at the time of granting such certificate, or a name so nearly resembling it as to be calculated to deceive. ✓ The certificate of incorporation of a domestic insurance corporation hereafter organized shall contain a provision that the number of directors shall in no case be less than the minimum number of incorporators required under this chapter to organize such a corporation. The number of directors of a domestic insurance corporation heretofore organized shall not be less than the number specified in the certificate of incorporation, except that the number of directors of such domestic insurance corporation may be reduced to the minimum number of incorporators required under this

chapter to organize such corporation; such reduction to be made pursuant to the provisions of the stock corporation law relating to the proceedings to be taken for the reduction of the number of directors of any stock corporation.

Source.—Former § 10, as amended by L. 1893, chap. 725; L. 1898, chap. 171, and L. 1900, chap. 366; originally revised from L. 1849, chap. 308, § 11; L. 1853, chap. 463, § 4; L. 1853, chap. 466, § 10; L. 1883, chap. 175, § 3, as amended by L. 1887, chap. 285; L. 1889, chap. 454, § 3.

See § 60, General Corporation Law. Change of name of corporation.

See § 6, General Corporation Law, chap. 28 of 1909. Similarity of corporate names.

SAME NAME.—The superintendent of insurance may issue a certificate of authority to do business to a stock corporation having the same name as a mutual corporation, theretofore authorized to do business, on the surrender and cancellation of the certificate issued to the mutual corporation. In re Life Assn. of America, Attorney-General Rep., 1901, page 187.

Evidence of dissolution must be established before a corporation can adopt a similar name. Attorney-General Rep., Jan. 9, 1906.

Certificate of incorporation must contain definite number of directors. Attorney-General Rep., June 21, 1904.

Certificate of incorporation must set forth time when directors and officers are elected. Attorney-General Rep., May 26, 1911.

MANDAMUS.—Mandamus will not lie to compel the attorney-general to certify the charter and declaration of a proposed insurance company when the declaration stated the proposed business of the company, among other things, to be "the inspection and certification as to the sanitary conditions of buildings and premises," as such business is not insurance. *People ex rel. Woodward v. Rosendale*, 142 N. Y., 126, aff'g 76 Hun, 103.

CHANGE OF NAME.—In re Locomotion F. B. H. & A. Assn. Attorney-General Rep., 1903, page 402.

Where it appears that a foreign corporation has been doing an unauthorized business in this state under a name similar to that of a domestic corporation, the court will restrain the foreign corporation from continuing its business in this state. *Employers' Assur. Corp. v. Employers' Ins. Co.*, 61 Hun, 552.

Before one insurance company can recover in an action brought against another insurance company to restrain the use of certain words as a part of its corporate name by the latter company or in its business, the plaintiff must show that the defendant was issuing policies in violation of the law of the State, and that its acts had actually caused some special injury, or would necessarily cause injury, to the plaintiff's business. *Employers' Assur. Corp. v. Employers' Ins. Co.*, 78 Hun, 446.

§ 11. Examination by superintendent.

If the declaration and charter specified in the preceding section shall be approved by the attorney-general, the superintendent shall thereupon cause an examination to be made by himself or

by one or more competent and disinterested persons specially appointed by him for that purpose, into the affairs of the corporation or proposed corporation. If such persons, after examination made, shall certify under oath, if it be a stock corporation, that the amount of capital required by law has been paid in and is possessed by it in cash, or is invested in the manner required by law; or if a mutual or co-operative corporation, that it has received and is in actual possession of the capital, premiums or engagements of insurance to the full extent required by law, the superintendent shall file such certificate in his department. Every such insurance corporation shall also deposit with the superintendent of insurance, before receiving authority to transact business in this state, such sums of money or securities as may be required by law.

Source.—Former § 11, as amended by L. 1893, chap. 725, and L. 1906, chap. 326; originally revised from L. 1849, chap. 308, § 11.

See § 28, post. Special deposit required by certain foreign insurance companies before receiving authority to transact business in this state.

DEPOSIT.—It is the policy of our Insurance Law to require foreign insurance companies to deposit approved securities with the Superintendent of Insurance, as a condition precedent to the transaction of business here. Attorney-General Rep., 1894, page 201.

A foreign life insurance company may deposit with the superintendent of insurance bonds of the government under which it is organized, provided such government accepts from our insurance companies seeking to do business there government bonds of the United States or of this state. In re Holland, etc., Bonds. Attorney-General Rep., 1893, page 242.

CAPITAL STOCK.—The capital stock of foreign credit guarantee companies must be paid in in cash, one-third thereof within one year, and the other two-thirds thereof within two years from their incorporation. In re Nat. Credit Ins. Co., Attorney-General Rep., 1893, page 164.

The examiners are not compelled to do more than to state the facts in their report on which the superintendent is to determine whether the assets of the corporation are sufficient to justify its continuance in business. People ex rel. Long Island Mutual v. Payn, 26 App. Div., 584; 50 N. Y. Supp., 334.

The superintendent of insurance upon examination cannot recognize an issue of stock until the proceedings to increase the capital stock are completed and the stock paid; such proceedings should be completed within a reasonable time after its commencement. Attorney-General Rep., Oct. 10, 1900.

WITHDRAWALS.—Insurance companies retiring from business may withdraw from deposit with the superintendent of insurance all securities in excess of an amount sufficient to secure policyholders in the United States. In re Fire Ins. Assn. Attorney-General Rep., 1893, page 216.

A deposit of funds with the superintendent cannot be assigned. In re Cred. Guar. Co., Attorney-General Rep., 1894, page 223.

§ 12. Minimum capital stock.

No domestic fire or marine stock insurance corporation shall be hereafter organized with a smaller capital stock than two hundred thousand dollars fully paid in in cash, but nothing in this section contained shall be understood to relate to the class of corporations provided for in articles nine or ten of this chapter.

A domestic stock insurance corporation having the power to transact the kind of insurance business described in subdivisions one, two, five, six, seven, eight, nine and ten of section seventy of this chapter shall not be hereafter organized with a smaller capital stock than one hundred thousand dollars fully paid in in cash. A domestic stock insurance corporation having the power to transact any kind of insurance business described in subdivisions three or four of section seventy of this chapter shall not be hereafter organized with a smaller capital stock than two hundred and fifty thousand dollars fully paid in in cash if authorized to transact any kind of insurance business described in one of such subdivisions or a smaller capital stock than five hundred thousand dollars fully paid in in cash if authorized to transact the kinds of insurance business described in both such subdivisions. Except as to the requirements of a minimum capital stock for the transaction of the kinds of insurance business described in subdivisions three or four of section seventy of this chapter every domestic stock insurance corporation hereafter organized having power to transact business under more than one subdivision of such section shall, in addition to the minimum capital stock prescribed in this section, have an additional capital stock of fifty thousand dollars fully paid in in cash, for every kind of insurance business more than one which it is authorized to transact. Any corporation to which this section is applicable shall also, at the time of its organization, have a surplus equal to fifty per centum of its capital stock, which surplus shall also be fully paid in in cash; provided that this requirement shall not apply to existing corporations reincorporated.

Source.—Former § 12, and L. 1899, chap. 85, § 1; originally revised from L. 1849, chap. 308, § 5; L. 1853, chap. 463, § 6, as amended by L. 1881, chap. 560; L. 1853, chap. 466, § 6, as amended by L. 1862, chap. 367; L. 1865, chap. 328, § 2; L. 1877, chap. 209, § 1, as amended by L. 1878, chap. 337.

Amended by L. 1910, chap. 634, and L. 1913, chap. 92.

Note.—The purpose of the amendment of this section by chapter 92 of 1913 was to compel companies carrying on the business of employer's liability in-

urance, and fidelity and surety insurance to possess a minimum capital of \$250,000 for each of these lines.—Ed.

This section, before it was amended by L. 1913, chap. 92, was intended to be a consolidation of former § 12 of the Insurance Law (L. 1892, chap. 690), and L. 1889, chap. 85, § 1. The latter act was repealed by the present Insurance Law, and was a separate statute relating to the minimum capital stock required for the organization of Fire or Marine Insurance Corporations. It was supposed to supersede § 111 of this Law, at least as to Fire or Marine Companies, and does not seem to have been replaced by any provision of the Consolidated Laws, but as there was some question whether said L. 1889, chap. 85, was repealed by the present Insurance Law, because of the enactment of L. 1909, chap. 596, it was specifically repealed by L. 1913, chap. 27, and as a result § 111 of the Insurance Law, relating to the incorporation of Mutual Fire Insurance Companies is unquestionably in force.

CAPITAL STOCK.—As the law of this state requires that a domestic fire and marine insurance company shall have at least \$200,000 capital stock, it would be unjust to permit a foreign company to do such business here with less capital. Attorney-General Rep., 1897, page 112.

Foreign life insurance companies seeking to do business here must deposit with the superintendent of insurance at least \$200,000, but are not required to have their capital fully paid in. In re North Amer. Life Ins. Co., Attorney-General Rep., 1900, page 178.

A foreign fire insurance company need not have its maximum capital stock paid before it is allowed to do business in this state. In re Nat. Fire Ins. Co., Attorney-General Rep., 1897, page 234.

The capital stock of fire insurance companies of other states must be fully paid up before such companies can be authorized to do business here. Attorney-General Rep., 1893, page 336.

§ 13. Deposit of securities.

Every deposit made with the superintendent of insurance by any domestic or foreign insurance corporation, shall be in the stocks or bonds of the United States or of this state or in the bonds of a county or incorporated city in this state, authorized to be issued by the legislature, not estimated above their par or their current market value. Such deposit may be made by an insurance corporation incorporated under the laws of another state of the United States in the stocks or bonds of such state or in the bonds of a county or incorporated city therein authorized to be issued by the legislature, not estimated above their par or their current market value; provided that similar domestic insurance corporations doing business in such state are authorized by the laws thereof to deposit or hold as security therein for the benefit or security of their policyholders and creditors in such state like securities of this state. Such deposit may be made by an insurance corporation incorporated under the laws of a country outside

of the United States authorized to do business in this state in the stocks or bonds of such country or of any province or city therein, or, if any securities other than those above named are offered as a deposit, they may be accepted at such valuation and on such conditions as the superintendent of insurance may direct, provided that similar domestic insurance corporations doing business in such country outside of the United States are authorized by the laws thereof to deposit or hold as security therein for the benefit or security of their policyholders and creditors in such country the stocks or bonds of the United States, the stocks or bonds of this state or of any county or incorporated city in this state and securities of the same general character as those which are offered for deposit in the insurance department; and provided, further, that if any country makes a deduction from the value of the securities deposited by similar domestic corporations a similar deduction shall be made from the securities deposited in the insurance department by corporations incorporated under the laws of such country. If the market value of any of the securities which have been deposited by any company shall decline below that at which they were deposited, the superintendent of insurance shall call upon the company to make a further deposit, so that the market value of all securities deposited by any such company shall be equal to the amount which it is required to deposit.

All deposits heretofore made pursuant to this chapter, and all deposits which shall or may hereafter be made pursuant thereto, and the proceeds thereof, shall be held in trust according to the law relating thereto without preference or priority for or on account of any cause or causes whatsoever to any beneficiary entitled to share therein.

Source.—Former § 13, as amended by L. 1893, chap. 725; originally revised from L. 1851, chap. 95, §§ 1, 2; L. 1853, chap. 453, § 14, as amended by L. 1862, chap. 300; L. 1877, chap. 439, § 1, as amended by L. 1881, chap. 628; L. 1881, chap. 600, § 1; L. 1888, chap. 517, § 1.

Amended by L. 1910, chap. 634, and L. 1914, chap. 102. In effect April 3, 1914.

The amendment of 1910, chap. 634, eliminated mortgage loans on improved realty as authorized deposits for domestic companies.

The amendment of this section by chapter 102 of 1914 added the last paragraph.

See §§ 17, 27, 28, post. As to deposit of securities.

FOREIGN CORPORATION.—Within the meaning of the insurance law a foreign corporation includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

It is the policy of our insurance law to require foreign insurance companies to deposit approved securities with the superintendent of insurance, as a condition precedent to the transaction of business here. Attorney-General Rep., 1894, page 201.

A foreign life insurance company may deposit with the superintendent of insurance bonds of the government under which it is organized, provided such government accepts from our insurance companies seeking to do business here government bonds of the United States or of this state. *In re Holland, etc., Bonds*, Attorney-General Rep., 1893, page 242.

INVESTMENTS.—Investment of the surplus assets and funds may be made in dividend-paying stock of solvent trust companies in this or other states. Attorney-General Rep., 1896, page 278. (But see § 100.)

Under the provisions of section 13 of the insurance law, the deposit required to be made by section 71 must be of the class of securities set forth in said section 13 and not in cash, and the superintendent of insurance is not authorized to retain the accrued interest in order to make good any impairment in the amount of the deposit required. Attorney-General Rep., 1906, page 537.

Investment of reserve fund of domestic insurance company in stocks and bonds. Attorney-General Rep., 1901, page 240.

Investments made by foreign insurance corporations must be of the same class and kind required of domestic companies. *In re Guar. Finance Co.*, Attorney-General Rep., 1897, page 325.

EXCHANGE OF SECURITIES.—In the exchange of securities, those should only be accepted at their par value or of equal par and market value with those exchanged for. *In re Continental Ins. Co.*, Attorney-General Rep., 1896, page 279.

A life insurance company may not subscribe for new bonds, investment in which is prohibited by § 100 under rights as holders of old bonds. Right to exchange bonds discussed. Attorney-General Rep., July 22, 1907.

SURRENDER OF SECURITIES.—Superintendent of insurance should not surrender the securities on deposit in insurance department for the benefit of policyholders in the United States. *In re Baloise Fire Ins. Co.*, Attorney-General Rep., 1903, page 424.

RECEIVER.—A receiver of an insolvent insurance company is not entitled to have transferred to him the securities deposited by the company with the superintendent of the insurance department. *Matter of Guardian Mut. Life Ins. Co.*, 13 Hun, 115; affirmed, 74 N. Y., 617.

An order directing the issuing of a writ of mandamus requiring the superintendent to deliver to a receiver of an insolvent insurance corporation the securities in his hands, was improperly granted; the distribution is to be made by the superintendent himself. *People ex rel. Ruggles v. Chapman*, 64 N. Y., 557.

The receiver of an insolvent life insurance corporation, appointed in an action brought by a creditor and stockholder, under the provisions of the Revised Statutes, to procure its dissolution and a distribution of its assets has no authority to require from the superintendent the securities deposited with him. *Ruggles v. Chapman*, 59 N. Y., 163.

EXCESS DEPOSITS.—Excess deposits, form of delivery of, to surety companies by superintendent of insurance. Attorney-General Rep., 1903, page 489.

Excess deposits should not be withdrawn "until all the conditions of the trust have been complied with." Attorney-General Rep., 1903, page 476.

When a greater sum than \$200,000 is deposited, it is held by the superintendent on the same terms as the \$200,000, and the excess over that amount cannot be withdrawn until all the conditions of the trust have been complied with. *L. Ins. Co. v. Maxwell*, 131 N. Y., 286.

ESTOPPEL.—Where the superintendent has accepted from an insurance company an assignment of a mortgage as a part of the deposit, on the faith of a representation on the part of the mortgagor that there is no legal or equitable defense to the same, he can avail himself of the doctrine of estoppel prohibiting a debtor, upon the faith of whose statements an assignment of his obligation has been accepted, from disputing such statements. *Smyth v. Munroe*, 84 N. Y., 354; *aff'd* 19 Hun, 550.

An offer of a mortgagor to prove, under his answer in foreclosure, that at the time the mortgagee, a domestic insurance company, made the loan on his premises, they were incumbered and not worth fifty per centum more than the loan, presents no defense to the action. *Washington L. Ins. Co. v. Clason*, 162 N. Y., 305.

The superintendent has power to foreclose a mortgage deposited with him; if, at the time of the assignment of the mortgage, the mortgagor signed a certificate consenting to the assignment, stating that the whole principal sum, with interest, is due and that there was no defense against the mortgage, such mortgagor will be estopped from setting up the defense of usury. *Smyth v. Lombardo*, 15 Hun, 415.

RETURN OF SECURITIES.—In the matter of returning to the depositors the securities which were deposited with the superintendent of insurance as condition precedent to insurance business. In *re People's Life Insurance Company*, Attorney-General Rep., 1896, page 133.

ASSIGNMENT.—A deposit of funds with the superintendent cannot be assigned. In *re Cred. Guar. Co.*, Attorney-General Rep., 1894, page 223.

§ 14. Exchange of securities; interest.

The stocks and securities deposited with the superintendent of insurance, pursuant to the provisions of this chapter, or heretofore deposited with him, may be exchanged from time to time for other securities receivable as provided in this chapter, and so long as the corporation depositing the securities shall continue solvent and comply with the laws of the state it shall be permitted by the superintendent to collect the interest or dividends on such deposits.

Source.—Former § 14, originally revised from L. 1851, chap. 95, § 2; L. 1853, chap. 463, § 6, as amended by L. 1881, chap. 560; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555; L. 1888, chap. 517, § 2.

The interest collected upon the securities follows the principal, and as a receiver of an insolvent insurance corporation cannot take possession of the principal, he cannot obtain possession of the interest collected thereon. *People v. Insurance Co.*, 147 N. Y., 25; *rev'd* 87 Hun, 220.

§ 15. State treasurer to countersign transfers of securities

No transfer of securities held by the superintendent of insurance shall be valid unless countersigned by the treasurer of the state or his deputy, and upon notice of at least five days to the corporation depositing such securities. The treasurer shall keep in his office or in the office of the superintendent a book in which shall be entered the name of the corporation from whose account such transfer of securities is made by the superintendent, the name of the transferee unless made in blank, the par value of the securities transferred, the amount for which every mortgage transferred is held by the superintendent; and within five days after countersigning and entering the same, the treasurer shall advise by mail the corporation from whose account such transfer is made, of the kind of security and the amount of the same thus transferred.

The treasurer shall have access at all times during office hours to the books of the superintendent of insurance for the purpose of ascertaining the correctness of any transfer or assignment presented to him to countersign and the superintendent shall have access during office hours to the book herein mentioned kept by the treasurer to ascertain the correctness of the entries upon the same.

The treasurer shall state in his annual report to the legislature the total amount of such transfer or assignment countersigned by him.

Source.—Former § 15, as amended by L. 1906, chap. 326; originally revised from L. 1868, chap. 732.

§ 16. Investment of capital and surplus.

The cash capital of every domestic insurance corporation required to have a capital, to the extent of the minimum capital required by law, shall be invested and kept invested in the stocks or bonds of the United States or of this state, not estimated above their current market value, or in the bonds of a county or incorporated city in this state authorized to be issued by the legislature, not estimated above their par value or their current market value, or in bonds and mortgages on improved unencumbered real property in this state worth fifty per centum more than the amount loaned thereon. The cash capital of every foreign insurance corporation to the extent of the minimum capital required of a like domestic corporation shall be invested and kept invested in the

same class of securities specified for domestic insurance corporations, except that like securities of the home state or foreign country shall be recognized as legal investments for the amount of the minimum capital required. The residue of the capital and the surplus money and funds of every domestic insurance corporation over and above its capital, and the deposit that it may be required to make with the superintendent, may be invested in or loaned on the pledge of any of the securities in which deposits are required to be invested or in the public stocks or bonds of any one of the United States, or in bonds and mortgages on improved unencumbered real property in this state worth ~~fifty~~ fifty per centum more than the amount loaned thereon, or except as in this chapter otherwise provided, in the stocks, bonds or other evidence of indebtedness of any solvent institution incorporated under the laws of the United States or of any state thereof; or in such real estate as it is authorized by this chapter to hold; but no such funds shall be invested in or loaned on its own stock or the stock of any other insurance corporation carrying on the same kind of insurance business, except that any such company organized under section seventy of this chapter for the purpose of engaging in business principally as a surety company may, subject to the consent of the superintendent of insurance, invest such funds in or loan such funds on the stock of any other corporation carrying on the same kind of business outside of but not within the United States; provided, however, that the superintendent in determining the condition of any such corporation so loaning or investing such funds shall not allow it as an asset the amount of the funds so loaned or invested; and, provided that, if a stock life insurance corporation shall determine to become a mutual life insurance corporation, it may, in carrying out any plan to that end under the provisions of section ninety-five of this chapter, acquire any shares of its own stock by gift, bequest or purchase. Any domestic insurance corporation may, by the direction and consent of two-thirds of its board of directors, managers or finance committee, invest, by loan or otherwise, any such surplus moneys or funds in the bonds issued by any city, county, town, village or school district of this state, pursuant to any law of this state. Any corporation organized under subdivision one-a, section one hundred and seventy of this chapter, for guaranteeing the validity and legality of bonds issued by any state, or by any city, county, town, village, school district, municipality or other civil division of any state, may invest by loan or otherwise any of such surplus moneys or funds as provided

in section one hundred of this chapter. Every such domestic corporation doing business in other states of the United States or in foreign countries may invest its funds in the same kind of securities in such other states or foreign countries as such corporation is by law allowed to invest in, in this state. Any life insurance company may lend to any policyholder upon the security of the value of his policy a sum not exceeding the lawful reserve which it holds thereon, and such loan shall become due and payable and be satisfied as provided in the loan agreement or policy. But nothing in this section shall be held to authorize one insurance corporation to obtain, by purchase or otherwise, the control of any other insurance corporation.

Source.—Former § 16, as amended by L. 1893, chap. 112; L. 1895, chap. 917; L. 1897, chap. 218; L. 1906, chap. 326; L. 1907, chap. 239; originally revised from L. 1840, chap. 287, §§ 1, 2; L. 1849, chap. 308, § 8, as amended by L. 1857, chap. 469; L. 1853, chap. 463, § 6, as amended by L. 1881, chap. 560, § 8, as amended by L. 1868, chap. 318; L. 1853, chap. 466, § 8, as amended by L. 1871, chap. 608; L. 1868, chap. 482, § 1; L. 1875, chap. 423, § 2, as amended by L. 1886, chap. 394; L. 1885, chap. 538, § 14; L. 1886, chap. 611, § 7.

Amended by L. 1909, chap. 240 and chap. 302; L. 1910, chap. 634; L. 1911, chap. 150; L. 1912, chap. 233, and L. 1913, chap. 304.

Note.—Section 16 was amended by L. 1910, chap. 634, so as to make clearer the requirements by law as to the investments of the capital surplus of domestic companies.—Ed.

SPECIAL RESERVE.—The second sentence of § 16 applies to investment of the special reserve fund, as provided for by § 130 in excess of one-half of its capital stock. Attorney-General Rep., 1901, page 240.

BORROW MONEY.—An insurance corporation, in the absence of any statutory restriction, has the power to borrow money, and, as an incident thereto, the power to transfer its assets in trust for the security of the lenders. *Nelson v. Eaton*, 26 N. Y., 410.

An insurance company may borrow money to pay losses, and it may borrow a note upon which to raise money for that purpose. *Furniss v. Gilchrist & Co.*, 1 Sandf., 53.

NOTES.—A mutual insurance company may, in the ordinary prosecution of its business, indorse its notes to creditors in lieu of cash. *Marine Bank v. Vail*, 6 Bosw., 421.

A fire insurance company has no right under the law to place its funds in the hands of an agent for the purpose of loaning the same upon call in conjunction with the funds of other parties. Attorney-General Rep., April 20, 1911.

MORTGAGE.—An offer of a mortgagor to prove that at the time the mortgagee, a domestic insurance corporation, made him the loan on his premises they were incumbered and not worth fifty per centum more than the loan, presents no defense to an action on the mortgage. *Washington Life Ins. Co. v. Clason*, 162 N. Y., 305.

The Department of Insurance should not admit as a legal investment any amount represented by a second purchase money mortgage held by an insur-

ance company where the first purchase money mortgage previously held by said company has been disposed of. Attorney-General Rep., March 23, 1915.

Real property charged with ground rent is incumbered and an insurance company is not permitted to invest in a mortgage on such property. In re Hunter, Attorney-General Rep., Jan. 24, 1906.

A life insurance company issuing policies on the tontine or "ten years dividend system," is in no sense a trustee of any particular fund for the holder of such a policy; their relations are simply that of debtor and creditor, and the policyholder at the expiration of the ten years is not entitled to an accounting, in the absence of any evidence of misappropriation, wrongdoing or mistake on the part of the company. *Uhlman v. N. Y. L. Ins. Co.*, 109 N. Y., 421; *Simons v. N. Y. L. Ins. Co.*, 38 Hun, 309; *Bogardus v. N. Y. L. Ins. Co.*, 101 N. Y., 328.

When investments in mortgages of another state may be made by a domestic insurance company. Attorney-General Rep., 1896, page 145.

SURPLUS.—Investment of the surplus assets and funds may be made in dividend-paying stock of solvent trust companies in this or other states. Attorney-General Rep., 1896, page 278.

The capital stock of an insurance company may be invested in bonds and mortgages executed directly to the company or obtained by assignment, where the charter does not provide the mode of investment, but impliedly gives the power to invest in stocks. *Mann v. Eckford's*, 15 Wend., 502.

An insurance company of this state cannot invest in a bond and mortgage on property in the state of Pennsylvania with outstanding ground rents. Attorney-General Rep., 1906, page 532.

Insurance companies may invest their assets other than their capital in bonds of the Canadian Southern Railway Company, guaranteed by the Michigan Central Railroad Company. Attorney-General Rep., 1912, page 573.

A domestic life insurance company may invest its surplus moneys in car trust certificates of Pennsylvania Steel Freight Car Trust. Attorney-General Rep., 1906, page 577.

Every domestic life insurance corporation doing business in other states of the United States or in foreign countries, may invest the funds required to meet its obligations incurred in such other states or foreign countries and in conformity to the laws thereof, in the same kind of securities in such other states or foreign countries that such corporation is by law allowed to invest in, in this state.

A reasonable discretion is given by the statute to a board of directors of a domestic life insurance company doing business in a foreign country to invest such part of its funds as may be required to meet its obligation under the laws of such foreign country, in lawfully prescribed securities at such times and in such amounts as will best subserve and protect the business interests of the company from year to year. A board of directors in authorizing transactions under this provision of the Insurance Law will be held to a strict account for any abuse of its discretionary powers. *Ruling Ins. Dept.*, October 15, 1908.

§ 17. Securities must be interest or dividend-paying.

The superintendent of insurance shall not credit any insurance corporation transacting business in this state with any security as

a part of its capital or as an investment of any part of its capital, or receive any security as a deposit, unless the security is interest or income-bearing or dividend-paying.

Source.—Former § 17; originally revised from L. 1886, chap. 207, § 2.

Foreign corporations must comply with the conditions imposed upon domestic corporations in regard to the class of securities which they may hold. Attorney-General Rep., 1894, page 201.

§ 18. Stocks, bonds and other evidences of debt.

If any domestic insurance corporation shall have invested any of its funds in or loaned any of its funds upon the stock, bonds or other evidences of debt of other corporations or of any nation, state, county, city, town, village, school district, municipality, or other civil division of any state, pursuant to the laws of this state, and the superintendent shall have reason to believe that such stock, bonds or other evidences of debt are not amply secured or are not yielding an income he may direct it to report to him under oath the amount thereof, the security therefor and its market value. No stock and no bond or other evidence of debt if in default as to principal or interest, or if not amply secured, shall be valued as an asset of the corporation above its market value. All bonds or other evidences of debt held by any life insurance corporation authorized to do business in this state shall, if amply secured and if not in default as to principal or interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made; provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, and provided further that the superintendent of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule, and the values found by him in accordance with such method shall be final and binding; provided, also, that any such corporation may return such bonds or other evidences of debt at their market value or their book value, but in no event at an aggregate value exceeding the aggregate of the values calculated according to the foregoing rule. The superintendent of insurance may, at any time, in his discretion, require any insurance corpora-

tion, other than a life insurance corporation, authorized to do business in this state to value its bonds or other evidences of debt in accordance with the foregoing rule.

Source.—Former § 18; originally revised from L. 1875, chap. 423, § 1.

Amended by L. 1909, chap. 301, and L. 1910, chap. 634.

Note.—Section 18 was amended by L. 1910, chap. 634, by exempting all insurance corporations, other than life companies, from the new ruling L. 1909, chap. 301, requiring amortization of securities of such corporations unless the superintendent determines at any time that bonds and securities in companies of other kinds shall be valued on amortization basis.—Ed.

NOTES.—An insurance company, with a clause in the act incorporating it, enumerating the kind of securities upon which it can loan moneys, but not including promissory notes, has no power to loan money on promissory notes, or on any other security other than those specially enumerated. *N. Y. Fireman Ins. Co. v. Ely*, 2 Cow., 678.

SURPLUS.—The surplus assets and fund of the domestic insurance companies may be invested in the dividend-paying stock of solvent trust companies in this and other states. Attorney-General Rep., 1896, page 278. •

ADVANCEMENT.—An insurance corporation has no power to advance its money or other obligations to sustain another corporation engaged in a similar business; an insurance company is not authorized to subscribe to the capital stock of a mutual insurance company, and to agree to give its notes in advance for premiums on insurance to be subsequently effected. *Berry v. Yates*, 24 Barb., 199.

REINSURANCE.—One insurance company cannot acquire the property of another insurance company and reinsure its risks merely as an incident to the transaction. *Pierson v. McCurdy*, 33 Hun, 520; *aff'd* 100 N. Y., 608.

§ 19. Lien on stock and profits.

Any domestic fire or marine insurance corporation may in its by-laws, prescribe that it shall have a lien upon the stock or certificates of profits of any stockholder or member for any debt thereafter becoming due to such corporation for premiums from him, but a copy of such by-laws shall be indorsed upon the certificate of stock or profits, and the lien may be waived by the written consent of the president of the corporation upon any transfer of such stock or certificate.

Source.—Former § 19; originally revised from L. 1862, chap. 367, § 6.

§ 20. Restrictions as to real property.

Every insurance corporation transacting business in this state may purchase, hold and convey real property only for the following purposes and in the following manner:

1. The building in which it has its principal office and the land upon which it stands.

2. Such as shall be requisite for its convenient accommodation in the transaction of its business.

3. Such as shall have been acquired for the accommodation of its business.

4. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for moneys due.

5. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

6. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts.

7. Such as shall have been acquired under sections thirteen and fourteen of the general corporation law.

All such real property specified in subdivisions three, four, five, six and seven of this section, as shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within five years after it shall have acquired title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business, and it shall not hold such property for a longer period unless it shall procure a certificate from the superintendent of insurance that its interests will suffer materially by the forced sale thereof, in which event the time for the same may be extended to such time as the superintendent shall direct in such certificate.

If it is a domestic marine insurance corporation, it may also acquire and hold such real property within the state or upon or in its waters as is or may be adapted to or available for use in protecting, storing and caring for wrecked vessels or cargoes, or in protecting, storing and caring for such vessels and appliances as are or may be employed for assisting the same, or is or may be adapted to or available for other purposes of or incident to marine salvage service, and may manage and dispose of such real property in the same manner and with like effect as if it were an unincorporated owner thereof.

No real property shall be acquired by any domestic life insurance corporation under subdivisions one or two hereof or under section fourteen of the general corporation law and no real property within the state shall be acquired by any foreign life insurance

corporation under subdivision two hereof, except with the approval of the superintendent of insurance. No real property shall be disposed of by any domestic life insurance corporation and no real property within the state shall be disposed of by any foreign life insurance corporation, by exchange for other real property, wherever situated, as the consideration for the transfer in whole or part unless the acquisition of the latter shall be requisite for the convenient accommodation of the corporation in the transaction of its business and shall be approved by the superintendent.

Source.—Former § 20, as amended by L. 1906, chap. 326; originally revised from L. 1849, chap. 308, § 9; L. 1853, chap. 463, § 9, as amended by L. 1876, chap. 357; L. 1853, chap. 466, § 9; L. 1881, chap. 484; L. 1885, chap. 538, § 2; L. 1886, chap. 611, § 8; L. 1887, chap. 481, § 1.

See § 53, post. Penalties for violation of any provision of the insurance law.

CERTIFICATE.—The failure of an insurance company, which has purchased real estate upon the foreclosure of a mortgage thereon owned by it, and has held the same for more than five years, to procure within such five years the certificate of the superintendent does not affect or divest its rights in such real estate, and it may still sell and convey a good title to a purchaser. *Home Ins. Co. v. Head*, 30 Hun, 405.

REAL PROPERTY.—A life insurance corporation has a right to purchase lands on which to erect a hospital for the care and treatment of its employees affected with tuberculosis. *People ex rel. Metropolitan Life Ins. Co. v. Hotchkiss*, 136 App. Div., 150.

A policyholder, without proof of special damage, cannot restrain the insurance company from purchasing land for building purposes. *Levy v. Mutual Life Ins. Co.*, 54 Hun, 315.

§ 21. When corporation to be deemed insolvent.

Every insurance corporation specified in articles two, three, four and five of this chapter, whose assets and credits are not sufficient to reinsure its outstanding risks in a solvent insurance corporation, shall be deemed insolvent and may be proceeded against as an insolvent corporation.

Source.—Former § 21; originally revised from L. 1851, chap. 95, § 6; L. 1853, chap. 463, § 17, as amended by L. 1879, chap. 161.

See § 101 et seq. General Corporation Law, Action to dissolve a corporation.

§ 22. Reinsurance.

Every insurance corporation doing business in this state may reinsure the whole or any part of any policy obligation in any

other insurance corporation; provided that if any domestic insurance corporation, other than a life insurance corporation, shall reinsure or determine to reinsure substantially all its risks, such reinsurance shall be submitted in advance to and have the approval of the superintendent of insurance, and provided further, that no domestic life insurance company shall reinsure its whole risk on any individual life except by permission of the superintendent of insurance, but may reinsure any portion of an individual risk and receive credit for the reserve on any policy covering a risk reinsured if the reinsuring corporation is authorized to transact business in this state, and may also receive credit for taxes on the premiums paid on any such policy. Nothing in this chapter contained shall be construed as permitting the reinsurance of a life insurance corporation having over two hundred and fifty million dollars of insurance outstanding and in force.

When a reinsurance agreement is made between other than life insurance corporations, the parties to such agreement shall, upon the policies involved, compute their unearned premium funds as follows: The reinsuring or ceding corporation shall, upon the portion of its liability not reinsured maintain a reserve to be computed in accordance with section 118 of the insurance law; the corporation assuming liability by reinsurance from the corporation issuing the original policy shall maintain a reserve equal to that which the reinsuring corporation would have been required to maintain upon the amount reinsured had it retained the liability ceded by it. No credit of any kind shall be allowed or given, either as a reduction of taxes or of liabilities, to any corporation transacting business in this state, for reinsurance made in corporations not authorized to issue policies in this state. The superintendent of insurance shall require schedules of reinsurance to be filed by each corporation at the time of making its annual report to the department.

Source.—Former § 22, as amended by L. 1904, chap. 759; originally revised from L. 1871, chap. 888, § 6; L. 1877, chap. 229, §§ 1, 2; L. 1879, chap. 489, §§ 3, 4, as amended by L. 1885, chap. 276.

Amended by L. 1909, chap. 301; L. 1910, chap. 168, and L. 1911, chap. 369.

Note.—Section 102 was amended by L. 1911, chap. 369, so as to provide that the section should not apply to policies of reinsurance. Its purpose was to supply a wider market for the reinsurance of risks of failed life insurance corporations by permitting the companies which had a non-participating business to reinsure participating policies and vice versa. At the same time, in anticipation of a possible merger of giant life insurance corporations

through a reinsurance arrangement, section 22 was amended so as to prohibit such merger in case any company has outstanding upward of two hundred and fifty million dollars of insurance in force.

An amendment covering section 22 by L. 1909, chap. 301, prohibits the reinsurance by a domestic life insurance company of its whole risk on any individual life except by permission of the superintendent of insurance.—Ed.

See § 240, post. Reinsurance of fraternal beneficiary societies, etc.

See § 1196, Penal Law. Transfers to and reinsurance of risks in unauthorized foreign corporations prohibited to co-operative associations.

REINSURANCE.—Risks held by foreign insurance companies may be reinsured by domestic insurance companies. Attorney-General Rep., 1896, page 145.

The fact that a life insurance company is authorized to reinsure its risks does not release it from any of its existing obligations. *People ex rel. Mut. Ins. Co.*, 92 N. Y., 105.

A contract by a life insurance company to pay a sum certain on a future day or on the death of a party before that day, on condition that the other party shall pay to it a certain sum annually, is violated by the company when it transfers all its assets to another company and ceases to do business. *Meade v. St. Louis Life Ins. Co.*, 51 How. Pr., 1.

A transfer of assets of one insurance company to another, the latter assuming the liability of the former on its outstanding policies, is not reinsurance. *Raymond v. Security Ins. Co.*, 44 Misc., 31.

The word "reinsurance" as used in the statute means premiums collected by such company for reinsuring the risks of other companies, and such premiums are included in the term "gross premiums received;" the sum paid out by such company to other companies for reinsuring its own risks is also included and cannot be deducted from the amount thereof, since such sum is an expense of the business. *People ex rel. Continental Ins. Co. v. Miller*, 177 N. Y., 515.

Reinsurance should be made in the name of and for the benefit of the company, and not for individual policyholders. *Casserly v. Manners*, 48 How. Pr., 219.

A corporation organized under § 70, subd. 4, may insure entire risks of a foreign surety company. Attorney-General Rep., 1896, page 145.

A foreign marine insurance company transacting business in the state of New York is entitled, under this section, to exemption from taxation upon premiums paid by it for reinsurance in companies authorized to issue policies in this state after October 1, 1892, the date at which the Insurance Law took effect; but the act is not retroactive and does not relate to premiums paid for reinsurance prior to that date. *People v. Reliance Marine Ins. Co.*, 70 Hun, 554.

TRANSFERRING BUSINESS.—A live stock insurance company organized under the provisions of article VIII of the Insurance Law cannot transfer its property, franchises and business through an individual to a business corporation of a foreign state. Attorney-General Rep., 1896, page 276.

An insurance company is not entitled to a deduction on account of reinsurance made by it in Lloyds, which is not amenable, and has not paid the tax provided for by § 34. In re *Standard Marine Insurance Company*, Attorney-General Rep., 1896, page 151.

PRO RATA.—The words “pro rata” in a policy of reinsurance of a fire insurance company mean according to the proportion which the amount of the policy of reinsurance bears to the amount of original insurance—that proportion remains fixed and cannot be changed by any act of the reinsured. *Home Ins. Co. et al. v. Continental Ins. Co.*, 180 N. Y., 389; aff’d 89 App. Div., 1.

REINSURANCE.—The authority given to insurance companies to reinsure policies or to take the risks of other companies does not justify subscriptions by them to the capital stock of a mutual insurance company. *Berry v. Yates*, 24 Barb., 199.

§ 23. Reinsurance by receiver.

The receiver of any domestic insurance corporation may reinsure, upon the written consent of the superintendent of insurance and the attorney-general, all of the policy obligations of the corporation in any solvent corporation authorized to do business in this state, if the assets of the corporation of which he is receiver are sufficient to effect such reinsurance. If such assets are insufficient for that purpose, the receiver, upon the like consent, may reinsure a percentage of each policy obligation on such corporation outstanding to the extent that its assets may be sufficient for that purpose. No contract of reinsurance shall be entered into by the receiver, except in pursuance of an order of the court in which the receiver was appointed directing the reinsurance and establishing the general form of the contract for the same.

Source.—Former § 23; originally revised from L. 1877, chap. 229, § 3.

REINSURANCE.—The court, in directing a receiver of an insurance company to reinsure for the benefit of policyholders, should give a preference to domestic companies, and to the one which will afford the best security, notwithstanding many policyholders unite in preferring another company. *Mooney v. British Com. Life Ins. Co.*, 9 Abb. Pr., N. S., 103.

The receiver of an insolvent fire insurance company is justified in using the unearned premium fund for purposes of reinsurance or of restoring to the policyholders upon cancellation of their outstanding policies that part of the unearned premium applicable to such cancelled policies; policyholders are preferred creditors to the extent of the unearned premium; a corporation, in contemplation of insolvency, may use its unearned premium fund in the acquiring of reinsurance as to all outstanding fire policies. *Attorney-General Rep.*, 1906, page 558.

The fact that a life insurance company is authorized to reinsure its risks does not release it from any of its existing obligations. *People v. Empire Mut. Ins. Co.*, 92 N. Y., 105.

Where the receiver of an insurance company entered into a contract in the state of New Jersey with a foreign insurance company for reinsurance, which contract was ratified and approved by order of the court, the foreign company was estopped from setting up the defense that the contract was in violation of the laws of this state. *Jay v. De Groot*, 2 Hun, 205.

§ 24. Limitation of risk.

No domestic insurance corporation, nor any insurance corporation organized under the laws of any country outside of the United States, doing business in this state, shall expose itself to any loss on any one risk or hazard to an amount exceeding ten per centum of its capital and surplus. No insurance corporation incorporated under the laws of any other state of the United States, doing business in this state, shall expose itself to any loss on any one risk or hazard within this state to an amount exceeding ten per centum of its capital and surplus. No portion of any such risk or hazard which shall have been reinsured in a corporation authorized to do insurance business in this state shall be included in determining the limitation of risk prescribed in this section. This section shall not apply to life insurance corporations, nor to marine insurance corporations authorized to do business in this state, nor to the certificates of title guarantee corporations, guaranteeing the correctness of searches for all instruments, liens or charges affecting titles to real property and chattels real, or guaranteeing and insuring the owners of real property and chattels real and others interested therein against loss by reason of defective titles thereto and incumbrances thereon.

Source.—Former § 24, as amended by L. 1906, chap. 326; originally revised from L. 1849, chap. 308, § 5; L. 1853, chap. 466, § 6, as amended by L. 1862, chap. 367; L. 1871, chap. 888, § 1; L. 1879, chap. 489, §§ 1, 2.

Amended by L. 1910, chap. 634, and L. 1911, chap. 595.

FOREIGN LAWS.—Every person who deals with a foreign corporation impliedly subjects himself to such laws of its own country affecting its power and obligations as the known and established policy of that government authorizes. *Canada Southern R. Co. v. Gebhard*, 109 U. S., 527.

RISKS.—A surety company is not exempt from section 24 of the Insurance Law, limiting the amount of any one risk; the section was not rendered inapplicable by chap. 720 of 1893, as amended by chap. 178 of 1895; the value of collaterals taken by the company are to be deducted from the amount. *Ind. and Gen. Trust Co. v. Tod*, 56 App. Div., 39. The interpretation and effect of all contracts is governed by the law of the place where made. *Smith v. Mutual Life*, 14 Allen, 336; *Wayman v. Southard*, 10 Wheat., 1.

§ 25. Jurisdiction of superintendent over foreign corporations.

The superintendent of insurance shall have the same supervision and make the same examination of the business and affairs

of every foreign insurance corporation doing business in this state, as of domestic insurance corporations, doing the same kind of business, and of its assets, books, accounts and general condition. Every such foreign corporation and its agents and officers shall always be subject to and be required to make the same statements and answer the same inquiries and be subject to the same examinations, and, in case of default therein, to the same penalties and liabilities as domestic insurance corporations doing the same kind of business, or any of the agents or officers thereof, are or may be liable to under the laws of this state or the regulations of the insurance department.

The superintendent may, whenever he deems it necessary, either in person or by a proper person appointed by him, repair to the general office of such foreign corporation, wherever the same may be, and make an investigation and examination of its affairs and condition. He may cancel and revoke the certificate of any such foreign corporation refusing or unreasonably neglecting to comply with the provisions of this section, or to allow the examination herein provided for to be made, and prevent such corporation from further continuance in business in this state.

A foreign insurance corporation may transact in this state only such kind of business as, under the laws of this state, a like domestic insurance corporation is authorized to transact.

No such corporation shall transact any business in this state not specified in the certificate of authority granted by the superintendent.

Source.—Former § 25, as amended by L. 1896, chap. 845; originally revised from L. 1869, chap. 902, § 14; L. 1871, chap. 888, § 8; L. 1873, chap. 593, § 2; L. 1881, chap. 484, § 2; L. 1882, chap. 235, § 2.

Amended by L. 1910, chap. 168.

CONDITIONS.—A state has the right to impose conditions, not in conflict with the Constitution or the laws of the United States, to the transaction of business within its territory by an insurance company chartered by another state, or to exclude such company from its territory, or, having given a license, to revoke it, with or without cause. *Doyle v. Continental Ins. Co.*, 94 U. S., 535.

A corporation organized in one State can transact business in another only with the consent, express or implied of the latter, and this consent may be accompanied by such conditions as the latter State may think fit to impose, which do not conflict with the Constitution or laws of the United States. *The Lafayette Ins. Co. v. French*, 18 How. (U. S.), 409; *Bank v. Earl*, 13 Pet., 519.

The business of a foreign insurance company writing marine insurance is not protected by the interstate commerce clause of the Constitution; a State may exclude a foreign insurance company or impose conditions upon its doing business within such State. *Hooper v. State of California*, 155 U. S., 648.

This section applies to all corporations authorized by law to make insurance. In *re National Credit Insurance Company*, Attorney-General Rep., 1893, page 164.

DEPOSIT.—An insurance company, organized under the laws of another state of the United States, for the transaction of business specified in § 70 of the Insurance Law, must make the same deposit of securities that is required from a domestic company. Attorney-General Rep., 1897, page 169.

CAPITAL.—A foreign insurance corporation doing business under a special charter granted in the state of Maryland or under the general law of that state need not have its maximum capital stock paid up before it shall be allowed to do business in this state. In *re National Fire Insurance Company*, Attorney-General Rep., 1897, page 234.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law, a "foreign corporation" includes one incorporated under the laws of another state of the United States. In *re Penn. Fire Ins. Co.*, Attorney-General Rep., 1895, page 56.

CAPITAL STOCK.—The capital stock of fire insurance companies of other states must be fully paid up before such companies can be authorized to do business here. Attorney-General Rep., 1893, page 336.

WHEN NOT ADMITTED.—A foreign corporation combining the business of building associations, life insurance and savings funds cannot be admitted in this state. In *re United Security Life Insurance and Trust Co.*, Attorney-General Rep., 1896, page 153.

SEVERAL KINDS OF INSURANCE.—A foreign corporation, like a domestic insurance company, cannot combine different kinds of insurance specified in this section. Attorney-General Rep., 1896, page 196.

A foreign corporation must limit itself to the kinds of insurance specified in the article of the insurance law under which domestic corporations are organized. In *re Ocean Accident and Guaranty Corporation of London, England*, Attorney-General Rep., 1897, page 230.

MANDAMUS.—A mandamus will not lie to compel the superintendent of insurance in this state to do an act regarding the admission to this state of an insurance company of another state. *People ex rel. Equitable Fire Co. v. Fairman*, 12 Abb. N. C., 268.

§ 26. Deposits by insurance corporations of other states.

Every insurance corporation incorporated under the laws of any other state of the United States, and doing business in this state, shall keep on deposit with the superintendent of insurance of this state, or with the auditor, comptroller or general fiscal officer of the state by whose laws it is incorporated, the same amount and character of securities which a like domestic insurance corporation is required to deposit with the superintendent of insurance of this

state, but a corporation of another state, depositing with its home state authorities bonds and mortgages on improved unencumbered real property located in the home state or in this state worth fifty per centum more than the amount loaned thereon, shall be allowed credit for such deposits covered by any certificate of deposit furnished the superintendent of insurance as hereinafter required. The superintendent of insurance shall be furnished with the certificate of such auditor, comptroller or general fiscal officer, under his hand and official seal, that he, as such auditor, comptroller or general fiscal officer of such state, holds in trust and on deposit, for the benefit of all the policy-holders of the corporation, such stocks and securities. Such certificate shall embrace the items of the securities so held, and shall state that the officer making it is satisfied that the securities are worth the amount required by law.

Source.—Former § 26; originally revised from L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555; L. 1853, chap. 463, § 14, as amended by L. 1862, chap. 300; L. 1877, chap. 439, § 1, as amended by L. 1881, chap. 628.

Amended by L. 1910, chap. 634.

See § 28, post. Special deposit required in certain cases.

Note.—Section 26 was amended by L. 1910, chap. 634, so as to provide that a corporation of another state, depositing with its home state authorities bonds and mortgages on improved unencumbered real property located in the home state or in this State worth 50% more than the amount loaned thereon, shall be allowed credit for such deposits covered by any certificate of deposit furnished the superintendent of insurance as hereinafter required.

This amendment was made necessary for the reason that section 13 was amended by eliminating mortgage loans on improved realty as authorized deposits under section 13. It was not the intention of the Legislature, however, to make such an elimination with regard to deposit credits with their State Departments by corporations of other states and hence the specific provision above referred to was placed in this section.—Ed.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law, a "foreign corporation" includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

DEPOSIT.—It is the policy of our Insurance Law to require foreign insurance companies to deposit approved securities with the superintendent of insurance as a condition precedent to the transaction of business here. Attorney-General Rep., 1894, page 201.

A foreign company desiring to do a life and accident business must deposit the maximum amount. Attorney-General Rep., Jan. 25, 1905.

The deposit of \$200,000 with the treasurer of the state of Maryland as "security for all the holders of policies or guarantees of said corporation," is not a compliance with this section. Attorney-General Rep., 1906, page 526.

A foreign company must deposit in home state \$100,000 for each kind of insurance which it is organized to transact under § 70, or \$250,000 if for three or more kinds. In re General I. Co., Attorney-General Rep., Jan. 8, 1906.

An insurance company, organized under the laws of another state of the United States, for the transaction of business specified in § 70 of the Insurance Law, must make the same deposit of securities that is required from a domestic company. Attorney-General Rep., 1897, page 169.

A foreign life insurance company may deposit with the superintendent of insurance bonds of the government under which it is organized, provided such government accepts from our insurance companies seeking to do business there government bonds of the United States or of this state. Attorney-General Rep., 1893, page 242.

IMPROVED, UNENCUMBERED REAL PROPERTY DEFINED.—Attorney-General Rep., Oct. 17, 1892; Oct. 8, 1895; Dec. 9, 1904, and Jan. 24, 1906.

BANKING.—A corporation is not entitled to admission in this state for the purpose of transaction of a business which includes a species of banking business in connection with insurance. In re United Security Life Insurance and Trust Co., Attorney-General Rep., 1896, page 153.

WITHDRAWING DEPOSIT.—When a greater sum than the minimum required is deposited, the superintendent holds the excess in trust, and the excess cannot be withdrawn until the conditions of the trust have been complied with. L. Ins. Co. v. Maxwell, 131 N. Y., 286.

Insurance companies retiring from business may withdraw from deposit with the superintendent of insurance all securities in excess of an amount sufficient to secure policyholders in the United States. Attorney-General Rep., 1893, page 216.

ASSIGNING DEPOSIT.—An insurance company, having made a deposit of funds with the superintendent of insurance, for the security of policyholders, pursuant to law, has no right to make an assignment of the same, or any part thereof. Attorney-General Rep., 1894, page 223.

NUMBER OF DIRECTORS.—The phrase in this section which reads, "the consent of the superintendent shall be first obtained to such increase or reduction of the number of directors," may be construed to mean, must be obtained as a condition precedent to its going into effect. Attorney-General Rep., February 6, 1914.

§ 27. Funds and capital of insurance corporations incorporated outside of the United States.

A foreign insurance corporation incorporated by or existing under the government or laws of any country outside of the United States, and admitted to do business in this state, shall not transact any business of insurance in this state, unless it shall have within the United States, deposited with insurance departments or held in trust as hereinafter provided, not less than five hundred thousand dollars, if a fire insurance corporation, and not less than two hundred thousand dollars if a life or casualty insur-

ance corporation, invested in like manner as the capital of a similar domestic insurance corporation is required to be invested.

The capital of such foreign fire insurance corporation, doing fire insurance business in this state, or of any such company hereafter admitted to such business in this state, shall, for the purposes of this chapter, be the aggregate value of such sums or securities as such corporation shall have on deposit in the insurance department of this state, and of the other states of the United States, for the benefit of policy holders in any of such states or in the United States, and of all bonds and mortgages for money loaned on real estate in this state or in any state of the United States, if such loans shall be made in conformity with the laws of such state providing for the incorporation of insurance companies therein and the investment of their capital, and of all other assets and property in the United States, in which fire insurance companies may invest under the provisions of sections thirteen and sixteen, if such bonds and mortgages, assets and property shall be held in the United States by trustees, approved by the superintendent of insurance and citizens of the United States, or deposited with a trust company to be approved by him, for the general benefit and security of all its policy holders in the United States after taking from such aggregate value the same deductions for losses, debts and liabilities in this and the other states of the United States, and for premiums upon risks therein not yet expired, as is authorized or required by the laws of this state, or the regulation of its insurance department with respect to fire insurance companies organized under the laws of this state.

In addition to the reports required by law of any such foreign fire insurance corporation, it shall annually, in the month of January, render to the superintendent a detailed statement of the items making up such capital, and the deductions to be made therefrom, signed and verified by the manager and a majority of the trustees (or if a trust company, by the proper officers thereof) of the corporation residing in the United States, and the superintendent shall, thereupon, and from such examinations as he may make of the affairs of the corporation, determine the amount of such capital as of the first day of January, and issue to such corpora-

tion his certificate of the amount of its capital so determined; and if it shall at any time appear that the net capital for which the last certificate shall be outstanding has been materially reduced, the superintendent may call in such certificate and issue another, corresponding to such reduced capital, providing the capital is not reduced below the sum of two hundred thousand dollars.

The capital of any such foreign fire insurance company, so determined and certified, shall be subject to taxation as provided for in section thirty-four of this chapter.

When any part of its capital is held by trustees or by a trust company, pursuant to the provisions of this section, such trustees or trust company shall be appointed by the board of managers or directors of such foreign insurance corporation, and a duly certified copy of the vote or resolution creating the trust shall, with a certified copy of such trust deed, be filed in the office of the superintendent of insurance; and the superintendent may examine such trustees or the agent or attorney of the corporation in the same manner as he is authorized by this chapter to examine the affairs and funds of any domestic insurance corporation, but the superintendent of insurance shall, upon the written request of any such foreign fire insurance company, transfer to trustees duly appointed by it under the provisions of this section any excess of securities which it shall have deposited with him above the sum of two hundred thousand dollars. The deposit required of such corporation shall be reckoned and considered as the sum of two hundred thousand dollars, which shall be deposited with the superintendent of insurance in the securities authorized by law. The said superintendent may also receive such additional amounts as said foreign insurance company shall deposit with him, but any additional amounts now on deposit, or which may hereafter be deposited with the said superintendent, shall be received and held by him as a voluntary deposit, in trust for all the policy holders of said foreign insurance company in the United States, and any securities in excess of said two hundred thousand dollars as aforesaid, shall on the written request of said foreign insurance company, be transferred to the trustees appointed by said company, as in this section provided.

Source.—Former § 27; originally revised from R. S., chap. 20, tit. 21, §§ 1, 2; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555; L. 1871, chap. 888, §§ 2-4; L. 1877, chap. 209, § 2, as amended by L. 1881, chap. 671.

Amended by L. 1910, chap. 634.

FOREIGN CORPORATION.—Within the meaning of the insurance law, a "foreign corporation" includes one incorporated under the laws of another State of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

APPLICATION.—This section applies to all corporations authorized by law to make insurance. In re National Credit Insurance Company, Attorney-General Rep., 1893, page 164.

When a greater sum than the minimum required is deposited, the superintendent holds the excess in trust, and the excess cannot be withdrawn until the conditions of the trust have been complied with. L. Ins. Co. v. Maxwell, 131 N. Y., 286.

The securities deposited by a foreign insurance company with the insurance department are to be held for the benefit of those policyholders insured in the same class or classes of insurance which the company is authorized to write in this state. Attorney-General Rep., 1892, page 389.

Foreign life insurance companies seeking to do business here must deposit with the superintendent of insurance at least \$200,000, but are not required to have their capital fully paid in. Attorney-General Rep., 1900, page 178.

ASSIGNMENT.—An insurance company, having made a deposit of funds with the superintendent of insurance, for the security of policyholders, pursuant to law, has no right to make an assignment of the same or any part thereof. Attorney-General Rep., 1894, page 223.

A deposit made by foreign insurance company with the insurance department cannot be transferred to be held as a deposit for another company formed by consolidation of the depositor company and another foreign insurance company. Attorney-General Rep., 1892, page 76.

A policy written by the depositing company after withdrawal from business in this state is protected by the deposit. Attorney-General Rep., 1892, page 121.

Insurance companies retiring from business may withdraw from deposit with the superintendent of insurance all securities in excess of an amount sufficient to secure policyholders in the United States. Attorney-General Rep., 1893, page 216.

CAPITAL STOCK.—The capital stock of fire insurance companies of other states must be fully paid up before such companies can be authorized to do business here. Attorney-General Rep., 1893, page 336.

Departmental and United States trustee deposits made by a foreign corporation, although transferred to Royal Company by indenture may not lawfully be included as a part of the United States capital of the Royal Company for protection of its United States policyholders. Attorney-General Rep., 1904, page 331.

A foreign life insurance company may deposit with the superintendent of insurance bonds of the government under which it is organized, provided such government accepts from our insurance companies seeking to do business there government bonds of the United States or of this state. Attorney-General Rep., 1893, page 242.

Deposits made by a foreign company which failed to obtain a renewal are held as security only for policies issued during the period the company was authorized to do business, and when such risks have been liquidated the deposits should be returned. Attorney-General Rep., 1902, page 174.

§ 28. Special deposit required in certain cases.

No insurance corporation, incorporated by or existing under the government or laws of other countries than the United States, except co-operative life and fraternal beneficiary insurance corporations, shall transact any business of insurance in this state, unless, if it transact fire or marine insurance business in this state, it has deposited with the superintendent of insurance, for the benefit and security of its policy holders in the United States, a sum not less than two hundred thousand dollars invested as in this chapter required, or if it transact in this state one or more of the kinds of insurance business specified in section seventy of this chapter, it has deposited with the superintendent of insurance, for like purposes such amount as may be required of domestic insurance corporations doing the same kinds of business. A foreign insurance corporation incorporated by or existing under the government or laws of any country outside of the United States, authorized to transact the business of fire insurance in this state, may be authorized to transact the business of ocean marine insurance, provided it makes an additional deposit with the superintendent of insurance of two hundred thousand dollars in deposit securities, and files with the insurance department annually a separate financial statement for each class of business.

Source.—Former § 28; originally revised from L. 1849, chap. 308, § 7; L. 1853, chap. 463, § 15, as amended by L. 1862, chap. 300; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555; L. 1877, chap. 439, § 1, as amended by L. 1881, chap. 628; L. 1880, chap. 428, § 1.

Amended by L. 1910, chap. 634.

See § 11, ante. Examination into affairs of corporation by superintendent of insurance.

General Accident Insurance Company of Philadelphia must deposit the same amount in the state of Pennsylvania as is required of a similar domestic corporation in this state, in order to secure renewal of licence to do business within this State. Attorney-General Rep., 1906, page 529.

The protection afforded by a deposit made by a foreign insurance company with the Superintendent of Insurance for the benefit and security of its

policyholders in the United States, includes policyholders in Porto Rico. Attorney-General Rep., March 27, 1912; and the Philippine Islands, July 20, 1915.

WITHDRAWAL OF DEPOSIT.—Insurance companies retiring from business may withdraw from deposit with the superintendent of insurance all securities in excess of an amount sufficient to secure policyholders in the United States which are held in trust for all such policyholders. Attorney-General Rep., 1893, page 216.

An insurance company, having made a deposit of funds with the superintendent of insurance, for the security of policyholders, pursuant to law, has no right to make an assignment of the same, or any part thereof. Attorney-General Rep., 1894, page 223.

Deposits made by a foreign company which failed to obtain a renewal are held as securities only for policies issued during the period the company was authorized to do business, and when such risks have been liquidated the deposits should be returned. Attorney-General Rep., 1902, page 174.

The Superintendent of Insurance should not surrender to a foreign fire insurance company the securities on deposit for the benefit of policyholders in the United States, until he is satisfied that every policy in any of the possessions of the United States has run out by expiry or cancellation. Attorney-General Rep., 1903, page 424.

ESTOPPEL.—If, at the time of an assignment of a mortgage to the superintendent as a part of the deposit, the mortgagor states that the whole sum is due and that there is no legal or equitable defense to the mortgage, the mortgagor is estopped from setting up the defense of usury. *Smyth v. Lombardo*, 15 Hun, 415.

Where the superintendent has accepted from a company an assignment of a mortgage as a part of the deposit, on the faith of a representation on the part of the mortgagor that there is no legal or equitable defense to the same, the mortgagor is estopped from setting up such a defense. *Smyth v. Munroe*, 84 N. Y., 354.

EXCESS.—When a greater sum than the minimum required is deposited, the superintendent holds the excess in trust and the excess cannot be withdrawn until the conditions of the trust have been complied with. *L. Ins. Co. v. Maxwell*, 131 N. Y., 286.

§ 29. Copy charter and verified statement to be filed.

No foreign insurance corporation shall transact any business of insurance in this state until it has filed in the office of the superintendent of insurance a certified copy of its charter or deed of settlement with a verified detailed statement of all the items, matters and other information in regard to its affairs required by law to be stated in the annual report of a similar domestic insurance corporation, made as of such date as the superintendent

may require, and an agreement under its corporate seal that it will not, while authorized to do business in this state, transact any business therein which a similar domestic insurance corporation is prohibited from transacting.

Source.—Former § 29; originally revised from L. 1853, chap. 463, § 15, as amended by L. 1862, chap. 300; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555; L. 1880, chap. 428, § 2.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 31, post. Agent not to transact business until certificate is filed in county clerk's office

See § 32, post. Renewal of certificate.

See § 49, post. Any person aiding in the transaction of business of foreign corporation is deemed an agent thereof.

See § 50, post. Agent's certificate of authority.

See § 53, post. Penalty for violation of Insurance Law.

See § 54, post. Agents not to act for unauthorized corporations.

See § 91, post. Certificate of authority of agents.

See § 137, post. License to agents in certain cases.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law, a foreign corporation includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

CAPITAL STOCK.—The capital stock of foreign credit guarantee companies must be paid in, in cash, one-third thereof within one year and the other two-thirds thereof within two years from their incorporation. Attorney-General Rep., 1893, page 164.

§ 30. Appointment of Attorney.

No foreign insurance corporation shall transact any business of insurance in this state until it has executed and filed in the office of the superintendent of insurance a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served with the same effect as if it was a domestic corporation. Service upon such attorney shall thereafter be deemed service upon the corporation.

Source.—Former § 30; originally revised from L. 1853, chap. 463, §§ 14, 15, as amended by L. 1862, chap. 300; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555; L. 1884, chap. 346, § 1.

Amended by L. 1910, chap. 634.

The amendment of 1910, chap. 634, repealed the provision requiring the superintendent to revoke the license of any authorized foreign corporation which removed a suit brought against it from the State to the United States courts.—Ed.

See § 1199, Penal Law. Acting for foreign insurance company which has **not designated superintendent of insurance as attorney.**

Within the meaning of the Insurance Law, a foreign corporation includes one incorporated under the laws of another state of the United States; if such companies were admitted to do business in this state prior to May 17, 1887, they are entitled to immunity from the penalty prescribed in section 30. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

The words "remove into the United States" courts do not apply to cases on appeal, but to cases removed on petition of defendant before pleading is filed. Ruling Ins. Dept., Apr. 27, 1910.

LABOR DAY.—The superintendent in receiving and admitting service of process acts as an agent of the corporation and not as an officer of the state; and service upon him on Labor Day is valid. *Flynn v. Union Surety and Guar. Co.*, 170 N. Y., 145.

JUSTICE'S COURT.—In justice's court a summons may be served on the local agent, provided no other person resides in the county on whom service might be made and no person has been designated to accept service. *Murray v. Am. Casualty Co.*, 88 App. Div., 224.

The appointment of the state superintendent of insurance as the attorney of a non-resident insurance company for the purpose of receiving service of process as required by Laws N. Y., 1884, chap. 346, sec. 1, does not authorize him to accept service by mail, and such service is void. *Farmer v. National Life Assn. of Hartford, Conn.*, Circuit Court, E. D., New York, May 10, 1892; 50 Federal Reporter, 829.

CITY COURT OF NEW YORK.—The summons in an action in the City Court of New York against a foreign insurance company may be served in the city of Albany on the superintendent of insurance at his office. *People v. Justices of City Court*, 25 Abb. N. C., 403.

INSUFFICIENT APPOINTMENT.—A certificate of appointment, not giving the individual name of the superintendent is sufficient. *Lafflin v. Travelers' Ins. Co.*, 121 N. Y., 713.

DEPUTY.—A service of a summons and complaint upon a life insurance company upon the deputy at the office of the superintendent is good although it is not shown that such deputy was specifically designated as a person upon whom service could be made. *Quinn v. Royal Ins. Co.*, 81 Hun, 207; 30 N. Y. Supp., 714; 62 St. Rep., 738.

EFFECT OF SERVICE ON SUPERINTENDENT.—For the purposes of an action brought to enforce a policy of a foreign corporation it is deemed an inhabitant of this state, and service upon it by delivering the summons to the superintendent is as effective as though made on the defendant personally. *Steele v. Conn. Gen. Life Ins. Co.*, 31 App. Div., 389.

Where a foreign fire insurance company has designated an agent in conformity with this section, it thereby submits itself to the jurisdiction of the state courts having authority to act, and a valid judgment may be rendered capable of being enforced upon any property of the insurance company within this state. *Gibbs v. Queens Ins. Co.*, 63 N. Y., 114.

While a state may authorize the seizure and sale by means of appropriate legal proceedings, of property of a foreign insurance company within its jurisdiction, it cannot subject to its laws the property of the company out of its jurisdiction. *Douglass v. Phenix Ins. Co.*, 138 N. Y., 209.

A State may designate the officer or agent on whom service of process may be made within such State, in actions or proceedings against a foreign corporation doing business within such State, and service upon such person is as valid as service upon the corporation. *The Lafayette Ins. Co. v. French*, 18 How. (U. S.), 404.

SECTION 16, GENERAL CORPORATION LAW.—This section does not preclude, even where there has been a written appointment of the superintendent of insurance, any other legal methods of service upon it, and where service has been made upon it under subd. 3 of § 432 of the Code of Civil Procedure, such service is good. *Howard v. Prudential Ins. Co.*, 1 App. Div., 135.

This section requiring a designation of the superintendent of insurance does not preclude service under § 432 of the Code of Civil Procedure. *Silver v. Western Assur. Co.*, 3 App. Div., 573.

CONSTITUTIONALITY.—An agreement of an insurance company, as a condition of transacting business in a certain state, to abstain in all cases from resorting to the federal court is void as against public policy and in conflict with the constitution of United States; but a state has the right to impose conditions, not in conflict with the constitution or the laws of United States, to the transaction of business within its territory by an insurance company organized under the laws of another state, or if such company has been given a license, to revoke it, with or without cause.

Doyle v. Continental Ins. Co., 94 U. S., 535; *Insurance Company v. Morse*, 20 Wall., 445; *Barron v. Burnside*, 121 U. S., 186; *Hooper v. California*, 155 N. Y., 652.

Statutes requiring foreign corporations, as a condition of doing business within a State, to stipulate not to remove into the courts of the United States suits brought against them in the courts of the State, have been adjudged to be unconstitutional and void. *Blake v. McClung*, 172 U. S., 239; see also *Commonwealth v. E. Tenn. Coal Co.*, 97 Ky., 224; *People, etc., v. Payson*, 151 Ill., 101.

An agreement to abstain in all cases from resorting to the courts of the United States is void as against public policy and in conflict with the United States Constitution. *Doyle v. Continental Ins. Co.*, 94 U. S., 535.

The superintendent should not file the designation by a foreign insurance corporation not authorized to transact business in this state, until such corporation shall have received the certificate of authorization of the superin-

tendent of insurance as specified in § 9 of the Insurance Law, which could only be issued after deposit of securities with the superintendent or the furnishing to him of the statutory certificate of the due deposit of the proper amount (and class of character) of securities with the proper public official in the home state, as required by §§ 11 and 26 herein. Attorney-General Rep., Jan. 9, 1909.

§ 31. Certified copy of superintendent's certificate to be filed in the clerk's office.

No agent of any foreign insurance corporation for the first year it is admitted to transact business in this state shall transact any business of insurance in this state until he has filed in the office of the clerk of the county where he resides, a certified copy of the superintendent's certificate of authority to do business, and until there has been published in a paper at Albany, in which notices by officers are authorized by law to be published for four successive weeks after such filing, a copy of such certificate and of the statement required by this chapter to be filed in the office of the superintendent and proof of such publication shall be filed in the office of the superintendent within thirty days thereafter, by an affidavit of the publisher of the newspaper, his foreman or clerk.

Source.—Former § 31, as amended by L. 1907, chap. 285; originally revised from L. 1853, chap. 463, §§ 14, 15, as amended by L. 1862, chap. 300; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter and verified statement to be filed in office of superintendent of insurance.

See § 32, post. Renewal of certificate.

See § 49, post. Any person aiding in the transaction of business of foreign corporation is deemed an agent thereof.

See § 50, post. Agent's certificate of authority.

See § 53, post. Penalty for violation of Insurance Law.

See § 54, post. Agents not to act for unauthorized corporations.

See § 91, post. Certificate of authority of agents.

See § 137, post. License to agents in certain cases.

See §§ 82, 83. Executive Law, chap. 23 of 1909. Designation of state paper.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law a foreign corporation includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

DELIVERY OF THIS POLICY.—A citizen of this state is not prohibited from making an application to a foreign insurance company not authorized to do business in this state for insurance, nor from receiving the policy here by mail, but an agent of the foreign company is prohibited from making a delivery of such policy. *People v. Imlay*, 20 Barb., 68.

BROKERS.—A policy of insurance in a Canadian company, which has never been licensed under § 50 of the Insurance Law to do business in this state, and which had no business existence in Canada when application for the policy was made, procured by insurance brokers doing business in the city of New York, is void, and the act of the brokers procuring it is, under § 1199 of the Penal Law, a misdemeanor, and renders them liable to the party insured for the injury sustained by him. *Burges v. Jackson*, 18 App. Div., 296.

PENALTY.—One acting within this state as the agent in receiving and procuring applications for insurance for a foreign company which has not filed proper certificates is liable to a penalty. *People v. McCann*, 67 N. Y., 506.

POLICY NOT VOID.—The failure on the part of a foreign insurance company to do the acts required under this section does not render the policy issued by it void. *Marshall v. Reading Fire Ins. Co.*, 78 Hun, 83.

AGENTS.—Corporations may act as agents for insurance companies when expressly authorized so to do by their charters, and not otherwise. *Attorney-General Rep.*, 1893, page 369.

One certified copy of the certificate of incorporation to one agent in each county is sufficient. *Ruling Ins. Dept.*, June 16, 1914.

§ 32. Renewal of certificate of authority; revocation.

The certificate of authority granted by the superintendent of insurance, pursuant to the provisions of this chapter, to a foreign insurance corporation to do business in this state, shall not remain in force for a longer period than one year, and all such certificates shall expire on the thirtieth day of April of the year next following the date of issue. The statements and evidences of investment required by this chapter to be filed in the office of the superintendent before a certificate of authority is granted to a foreign corporation, shall be renewed from year to year, in such manner and form as the superintendent may require, with an additional statement of the amount of premiums received and losses sustained in this state during the preceding year so long as such authority continues. If the superintendent is satisfied that the capital, securities and investments remain secure, and that it may be safely intrusted with a continuance of its authority to do

business, he shall grant a renewal of such certificate of authority. Whenever in the judgment of the superintendent of insurance it will best promote the interests of the people of this state, he may, after a hearing on notice, revoke the certificate of authority of a foreign corporation to do business in this state, prior to its expiration under this section. The action of the superintendent of insurance in revoking the certificate of authority of a foreign corporation shall be subject to review by writ of certiorari.

Source.—Former § 32, as amended by L. 1893, chap. 725; originally revised from L. 1853, chap. 463, §§ 14, 15, as amended by L. 1862, chap. 300; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555.

Amended by L. 1909, chap. 301, and L. 1913, chap. 9.

Note.—The purpose of the amendment of this section by chapter 9 of 1913 was to give the Superintendent of Insurance the power to revoke the certificate of authority of a foreign corporation whenever in his judgment the best interests of the people would be promoted.—Ed.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter and verified statement to be filed in office of superintendent of insurance.

See § 31, ante. Agent not to transact business until certificate is filed in county clerk's office.

See § 49, post. Any person aiding in the transaction of business of foreign corporation is deemed an agent thereof.

See § 50, post. Agent's certificate of authority.

See § 53, post. Penalty for violation of Insurance Law.

See § 54, post. Agents not to act for unauthorized corporations.

See § 91, post. Certificate of authority of agents.

See § 137, post. License to agents in certain cases.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law a foreign corporation includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

MANDAMUS.—The court will not, on mandamus to the superintendent of insurance, direct him to file the annual statement of an insurance company of another state, and issue a renewal certificate to its agent, if it appear that he has received and examined the annual statement, and has disapproved the condition of the company exhibited thereby. *People ex rel. Hartford Co. v. Fairman*, 12 Abb. N. C., 252.

The superintendent has the right to refuse to renew the license of a foreign company unless it complies with the statute. In re General I. Co., Attorney-General Rep., Jan. 8, 1906.

§ 33. Reciprocal requirements.

If, by the existing or future laws of any state, an insurance corporation of this state having agencies in such other state or the agents thereof, shall be required to make any deposit of securities in such other state for the protection of policy holders or otherwise, or to make payment for taxes, fines, penalties, certificates of authority, license fees or otherwise, greater than the amount required by this chapter from similar corporations of such other state by the then existing laws of this state, then and in every such case, all insurance corporations of such state, established or heretofore having established an agency in this state shall be and they are hereby required to make the like deposit for the like purposes in the insurance department of this state, and to pay the superintendent of insurance for taxes, fines, penalties, certificates of authority, license fees and otherwise, an amount equal to the amount of such charges and payments imposed by the laws of such other state upon the insurance corporations of this state and the agents thereof.

The superintendent of insurance may remit any of the fees and charges which he is required by law to collect, except such as he is required to collect by virtue of this section; but no discrimination shall be made in favor of one corporation over another from the same state or country.

Whenever it shall appear to the superintendent of insurance that permission to transact business within any state of the United States or within any foreign country is refused to a company organized under the laws of this state, after a certificate of the solvency and good management of such company has been issued to it by the said superintendent and after such company has complied with any reasonable laws of such state or foreign country requiring deposits of money or securities with the government of such state or country, then and in every such case, the superintendent may forthwith cancel the authority of every company organized under the laws of such state or foreign government, and licensed to do business in this state, and may refuse a certificate of authority to every such company thereafter applying to him for authority to do busi-

ness in this state, until his certificate shall have been duly recognized by the government of such state or country.

Source.—Former § 33, as amended by L. 1896, chap. 23, and L. 1906, chap. 326; originally revised from L. 1865, chap. 694, as amended by L. 1875, chap. 60.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law a foreign corporation includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

CONSTITUTIONALITY.—Chapter 694 of 1865, providing that an insurance corporation of another state seeking to do business here shall pay to the superintendent for taxes, fines, etc., an amount equal to that imposed by the existing or future laws of the state of its origin, upon companies of this state seeking to do business there, when such amount is greater than that required for such purposes by the then existing laws of this state, is not an unlawful delegation of legislative power. *People v. Fire Ass'n of Philadelphia*, 92 N. Y., 311; aff'g 29 Hun, 205; aff'd in 119 U. S., 110.

An act requiring foreign insurance companies doing business in the city of New York to pay to it a percentage of premiums is constitutional. *Trustees of Exempt Firemen's B. Fund v. Roome*, 93 N. Y., 313; aff'g 29 Hun, 391.

§ 34. Taxation of foreign corporations.

The capital of an insurance corporation incorporated under the laws of any state or country outside of the United States, to the extent employed in the transaction of business in this state, and as determined and certified as prescribed by section twenty-seven of this chapter, shall be subject to taxation the same as the capital of a like domestic insurance corporation, to be levied, assessed and collected, as prescribed by law, at such place in the state as it shall have its principal office. Upon satisfactory proof to the superintendent of insurance that any foreign insurance corporation has neglected or refused to pay any tax levied and assessed under the laws of this state, he shall revoke any certificate of authority granted by him to such corporation to do business in this state, and it shall thereafter be precluded from doing business herein. Every health or casualty insurance corporation incorporated by or organized under the laws of any government outside the United States engaged in the transaction of the business of health or casualty insurance in this state under a certificate of authority from the superintendent of insurance shall annually on or before the first

day of March, pay to the superintendent of insurance a tax of two per centum on all premiums received in cash or otherwise by its attorneys or agents in this state during the year ending on the preceding thirty-first day of December, for business done at any time in this state on risks resident therein. Every life insurance corporation incorporated by or organized under the laws of any government outside of the United States engaged in the transaction of the business of life insurance in this state under a certificate of authority from the superintendent of insurance shall annually on or before the first day of March, pay to the superintendent of insurance a tax of one per centum on all premiums received in cash or otherwise by its attorneys or agents in this state during the year ending on the preceding thirty-first day of December, for business done at any time in this state on risks resident therein. If any such corporation shall neglect or refuse to pay such tax, the superintendent shall collect the same out of the interest on the stocks or securities deposited in the insurance department. The agent of every corporation, association or individual not incorporated by the laws of this state to effect insurances against marine risks shall annually, on or before the first day of February, pay to the superintendent of insurance a tax of two per centum upon the amount of all premiums upon insurances against marine risks which have been received by such agent or any person for him or have been agreed to be paid for any such insurance affected or agreed to be affected or procured by him, within this state, for the year ending the thirty-first day of December preceding. In ascertaining the amount of premiums upon which said two per centum tax is to be levied, there shall be deducted from the premiums aforesaid, on account of reinsurances, such portion of the premiums upon said reinsurances as may have been paid to companies that are subject to the payment of the tax hereby provided for, but no credit or deduction shall be allowed on account of such reinsurances where any part of the risk insured against is reinsured in a corporation authorized to effect insurances against fire or in the fire insurance branch of a corporation authorized to effect insurances against both marine and fire risks.

Source.—Former § 34, as amended by L. 1893, chap. 725, and L. 1904, chap. 708; originally revised from R. S., pt. 1, chap. 22, tit. 21, § 3, as amended by L. 1837, chap. 30; L. 1853, chap. 463, § 15, as amended by L. 1862, chap. 300; L. 1871, chap. 888, § 7; L. 1882, chap. 371.

Amended by L. 1910, chap. 634, and L. 1911, chap. 766.

FOREIGN CORPORATION.—Within the meaning of the insurance law, a foreign corporation includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

DOING BUSINESS.—Receiving renewal premiums on policies already in force, by mail, directly from the policy holders, under provisions in the policies that the premiums were payable in another State, is not “doing business” within a State. State v. Conn. Mut. Life Ins. Co., 61 S. W. Rep., 75.

FRANCHISE TAX.—A foreign marine insurance company doing business in this state must pay the annual tax imposed by § 187 of the tax law and is not entitled to have it deducted from other taxes paid by the company under the provisions of this section of the Insurance Law. People v. Thames & Mersey M. Ins. Co., 176 N. Y., 531.

The franchise tax assessed pursuant to § 187 is not to be deducted from the tax assessed pursuant to § 32. Attorney-General Rep., 1902, page 164.

TAX.—Section 187 of the tax law, authorizing an annual tax upon the gross amount of premiums received during the preceding calendar year by every domestic insurance company, for the privilege of exercising corporate franchises and carrying on business in this state, to be paid over before the first day of June in each year, is not retroactive, but prospective in its operation, and imposes a tax not upon premiums derived from contracts made prior to the time the statute took effect, but upon future business only. People ex rel. Assur. Soc. v. Miller, 179 N. Y., 227.

MARINE INSURANCE.—A foreign marine insurance company is entitled by virtue of § 22 of the Insurance Law to exemption from taxation upon premiums paid by it for reinsurance. People v. Reliance Marine Ins. Co., 70 Hun, 554.

The taxes paid by a foreign marine insurance corporation to the superintendent of insurance are based, not upon the residence of the owner of the hulls or the merchandise insured, nor upon the particular point at which the insurance “commences to attach,” but wholly upon the “premiums upon insurances against marine risks which have been received by the agent of such company, or any person for him, or have been agreed to be paid for any such insurance, effected or agreed to be effected or procured by him within this state.” Attorney-General Rep., 1904, page 250.

DEDUCTION.—An insurance company is not entitled to a deduction on account of reinsurance made by it in Lloyds which is not amenable and has not paid the tax provided for by § 34. In re Standard Marine Insurance Company, Attorney-General Rep., 1896, page 151.

LLOYDS.—The agent of the United States Lloyds underwriting marine insurance in this state are liable to the payment of the tax of two per cent imposed by § 34 of the Insurance Law. Prior statutes imposing a similar tax are probably applicable to them, but cannot be enforced by superintendent of insurance. Attorney-General Rep., 1899, page 379.

The provisions of § 523 of the New York Consolidation Act apply to an unincorporated association known under the name of the American Lloyds. *Fire Department v. Stanton*, 177 N. Y., 51.

REINSURANCE.—The word "reinsurance" means premiums collected by such company for reinsuring the risks of other companies, and such premiums are included in the term "gross premiums received;" the sum paid out by such company to other companies for reinsuring its own risks is also included and cannot be deducted from the amount thereof, since such sum is an expense of the business. *People ex rel. Continental Co. v. Miller*, 177 N. Y., 515.

The total amount of premiums received by a foreign corporation by its agents in this State, less such part thereof as may have paid a tax to any other State, are subject to taxation under § 34. Attorney-General Rep., February 17, 1911.

§ 35. Superintendent to forward process.

Whenever lawful process against an insurance corporation or one or more persons shall be served upon the superintendent of insurance under the provisions of this chapter, he shall forthwith forward a copy of such process by mail, prepaid and directed to the secretary of the corporation or to the attorney-in-fact for such person or persons, or, in the case of corporations incorporated under the laws of any foreign government, to the resident manager or last appointed general agent of the corporation in this country.

For each copy of process the superintendent shall collect the sum of two dollars, which shall be paid by the plaintiff at the time of such service, to be recovered by him as part of the taxable disbursements if he succeeds in the suit. Provided, however, that when one or more underwriters of the same group of Lloyds or inter-insurance associations are joined in the same suit or proceeding but one copy of such process shall be served.

Source.—Former § 35; originally revised from L. 1884, chap. 346, § 2.

Amended by L. 1911, chap. 502.

§ 36. Officers and directors not to be pecuniarily interested in transactions.

No director or officer of an insurance corporation doing business in this state shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in, any purchase by or sale to such corporation of any property, or any loan from such corporation, nor be pecuniarily interested, either as principal, coprincipal, agent, or beneficiary, in any such purchase, sale or loan; provided that nothing herein contained shall prevent a life insurance corporation from making a loan upon a policy held therein by the borrower not in excess of the net value thereof.

Any person violating any provision of this section shall be guilty of a misdemeanor.

Source.—Former § 36, as amended by L. 1906, chap. 326.

See § 53, post. Penalty imposed for violation of Insurance Law.

See §§ 664, 665, 667, Penal Law. General provisions relating to officers and directors.

See § 1191, Penal Law. Discriminations by insurance corporations and officers.

See § 1197, Penal Law. Misconduct of officers and agents of co-operative insurance companies.

See § 297, Penal Law. Misconduct of directors of monied corporations.

Section 36 of the Insurance Law and § 297 of the Penal Law are complete and independent provisions and are not required to be construed together, and § 21 of the Penal Law is not applicable to the construction of said section of the Insurance Law; the deposit of moneys belonging to an insurance corporation in a bank returnable upon demand in accordance with the terms of certificates of deposits issued at the time is not a loan within the meaning of said § 36; nor will a mere verbal promise not shown to be binding upon the bank that the deposit should remain until a loan had been liquidated bring the transaction within said section. *People v. Thomas*, 71 Misc., 339.

It is a violation of the spirit of § 36 for a director of a company to draw plans and supervise the construction of a building for his company. *Ruling Ins. Dept.*, Oct. 8, 1910.

§ 37. Corporations heretofore formed; exemption of corporations subject to supervision of banking department.

Any domestic insurance corporation heretofore incorporated or extended under the provisions of any general or special law of the state is hereby brought under all of the provisions of this chapter relating to such corporation, except that its capital may continue of the amount named in its charter during the existing term thereof, unless it extends its business to other kinds of insurance, and it shall be entitled to all privileges granted by such

charter not authorized by this chapter. A greater number than a majority of the directors of any such specially chartered corporation shall not be required to be residents of this state notwithstanding the provisions of any special law. The provisions of this article shall not apply to any corporation subject to the supervision of or required by or in pursuance of law to report to the superintendent of banks, but any such corporation shall be subject to examination by the superintendent of insurance and shall make such report to him as he shall require.

Source.—Former § 37; new.

Amended by L. 1910, chap. 634.

See § 52, post. Reorganization of existing corporations and amendments of certificates.

SPECIAL CHARTERS.—Mutual fire insurance companies doing business in this state under special laws passed prior to chap. 308 of 1849 have the right to transact business under their original charters until the same expires by lapse of time. Attorney-General Rep., 1897, page 148.

A marine insurance company, incorporated by special act before the passage of the first general insurance law in 1849, may extend its charter in accordance with section 158 of the Insurance Law and continue to operate under its original charter, subject to the limitations contained in section 37 of the Insurance Law. Attorney-General Rep., March 21, 1912.

§ 38. Fiduciary capacity of agents.

Every person appointed or acting in this state as agent of any insurance corporation who receives or collects any moneys as such agent, shall be responsible in a trust or fiduciary capacity to such corporation therefor.

Source.—Former § 38; originally revised from L. 1873, chap. 688, § 1.

RATE.—A representation that the rate charged by a board of underwriters of the city where the property to be insured is situated is less than it really is, the insuring company treating the regular board rate as important, and delivering its policy on the express agreement that it should be null and void in case the rate was higher than represented, is a material misrepresentation and renders the policy void. *Armour v. Transatlantic Fire Ins. Co.*, 15 J. & S., 352.

§ 39. Examiners and examinations.

The superintendent of insurance shall, as often as he deems it expedient, and, if a domestic life or casualty insurance corporation, at least once in three years, or, if any other domestic insurance corporation, association, society or order, at least once in five years, examine into the affairs of any insurance corporation doing business in this state,

and into the affairs of any corporation organized under any law of this state or having an office in this state, which corporation is engaged in or is claiming or advertising that it is engaged in organizing or receiving subscriptions for or disposing of stock of, or in any manner aiding or taking part in the formation or business of, an insurance corporation or corporations, or which is holding the capital stock of one or more insurance corporations for the purpose of controlling the management thereof as voting trustee or otherwise. For such purpose he may appoint as examiners one or more competent persons not officers of or connected with or interested in any insurance corporation other than as policy holders; and upon such examination he, his deputy or any examiner authorized by him may examine under oath the officers and agents of such corporation and all persons deemed to have material information regarding the company's property or business. Every such corporation, its officers and agents, shall produce its books and all papers in its or their possession relating to its business or affairs, and any other person may be required to produce any book or paper in his custody deemed to be relevant to the examination, for the inspection of the superintendent, his deputies or examiners whenever required; and the officers and agents of such corporation shall facilitate such examination and aid the examiners in making the same so far as it is in their power to do so. Every such examiner shall make a full and true report of every examination made by him, verified by his oath, which shall comprise only facts appearing upon the books, papers, records or documents of such corporation, or ascertained from the testimony, sworn to, of its officers or agents or other persons examined under oath concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts so disclosed, and said report so verified shall when filed be presumptive evidence in any action or proceeding in the name of the people against the corporation, its officers or agents, of the facts stated therein. The superintendent shall grant a hearing to the corporation examined before filing any such report; and may withhold any such report from public inspection for such time as he may deem proper and may, if he deems it for the interest of the public to do so, publish any such report or the result of any such examination as contained therein, in one or more newspapers of the state.

Source.—Former § 39, as amended by L. 1906, chap. 326; originally revised from L. 1849, chap. 308, § 23, as amended by L. 1866, chap. 577; L. 1851, chap.

95, § 5; L. 1853, chap. 463, § 17, as amended by L. 1866, chap. 577; L. 1851, chap. 95, § 5; L. 1853, chap. 463, § 17, as amended by L. 1879, chap. 161; L. 1853, chap. 466, § 24; L. 1869, chap. 902, § 15; L. 1886, chap. 611, § 15.

Amended by L. 1910, chap. 634, and L. 1913, chap. 304.

Note.—The purpose of the amendment of this section by chapter 304 of 1913 was to require examinations of casualty companies at least once in three years instead of once in five years as formerly.

See § 843, Code Civ. Proc. Examiner may administer oath.

See § 1197, subd. 3, Penal Code. Refusal to permit superintendent to make examination is misdemeanor.

See § 665, subd. 3, Penal Code. False statement of affairs of corporation.

OATH.—Under the provisions of § 39 of the Insurance Law, and § 843 of the Code of Civil Procedure, examiners have the power to administer oaths to the officers and agents of any corporation subject to examination. Attorney-General Rep., 1900, page 259.

FOREIGN OFFICIALS.—Officials of foreign states have no legal right to examine into the affairs of a domestic insurance company. Attorney-General Rep., 1894, page 196.

§ 40. Examination by superintendent upon request of stockholder, policyholder or creditor.

The superintendent shall make an examination into the affairs of any insurance corporation doing business in this state, whenever any stockholder, policyholder or judgment creditor of any such corporation shall, by a declaration subscribed and sworn to by him, notify the superintendent of facts within the knowledge of the person making the declaration, and stated therein, or within the knowledge of persons whose affidavits stating the same are presented therewith, which in the judgment of the superintendent makes such an examination advisable.

Source.—Former § 40, as amended by L. 1906, chap. 326; originally revised from L. 1873, chap. 851, § 2.

INSOLVENT COMPANY.—The Supreme Court has power to entertain proceedings to close up the affairs of an insolvent life insurance company, on the petition of policyholders, when the superintendent of the insurance department does not institute proceedings. *Mooney v. British Com. Life Ins. Co.*, 9 Abb. Pr., N. S., 103.

§ 41. Impairment of capital.

Whenever it appears to the superintendent, from any statement made to him or from an examination made by him or by any examiner appointed by him, that the capital stock of any domestic insurance corporation, except a life insurance corporation,

is impaired to the extent of twenty-five per centum thereof or that its assets are insufficient to justify its continuance in business, he shall determine the amount of such impairment or deficiency, and issue a written requisition to the corporation to require its stockholders to make good the amount of the impairment or deficiency within such period as he may designate, not less than thirty nor more than ninety days from the service of the requisition. If the amount of any such impairment or deficiency shall not be made good within the time specified in such requisition, and proof thereof filed with the superintendent of insurance, the corporation shall be deemed insolvent and shall be proceeded against as an insolvent corporation, by the attorney-general in the manner authorized by law. If the capital stock of any foreign insurance corporation, except a life insurance corporation, doing business in this state is so found impaired the superintendent shall revoke the certificate of authority issued to such corporation and shall cause a notice thereof to be published in the state paper for four weeks and such corporation, its agent or agents, shall discontinue the issuing of any new policies within this state.

Source.—Former § 41, as amended by L. 1904, chap. 451; originally revised from L. 1849, chap. 308, § 13, as amended by L. 1864, chap. 425, and § 23 as added by L. 1866, chap. 577; L. 1851, chap. 95, § 7; L. 1853, chap. 463, § 17, as amended by L. 1879, chap. 161; L. 1853, chap. 466, § 24.

See § 12, ante. Minimum capital stock of marine or fire stock company.

MUTUAL INSURANCE COMPANIES.—The question as to the continuance in business of a mutual insurance company is to be determined by the superintendent under § 43 of the Insurance Law, and § 41 of that act does not apply to such companies. *People ex rel. Long Island Mut. v. Payn*, 26 App. Div., 584; 50 N. Y. Supp., 334.

EXAMINERS.—It is erroneous for the official examiners of the insurance department to omit to credit the corporation with capital stock notes when such notes are in the possession of the company, unincumbered at the time when the examination is made. *People v. Equitable Mut. Ins. Co.*, 1 App. Div., 84; aff'g 12 Misc., 556.

CAPITAL STOCK.—The capital stock of fire insurance companies of other states must be fully paid up before such companies can be authorized to do business here. Attorney-General Rep., 1893, page 336.

REQUISITION.—The superintendent of insurance having made requisition upon a fire insurance company to make good an impairment of its capital cannot withdraw the same. Attorney-General Rep., 1897, page 254.

SPECIAL RESERVE FUND.—Special reserve fund should not be withdrawn where the surplus fund is impaired. In re *Amer. Fire Ins. Co.*, Attorney-General Rep., 1896, page 237.

PUBLIC POLICY.—Where the board of directors of an insolvent fire insurance company having creditors passes a resolution to reinsure its risks, liquidate its affairs, or sell a majority of its stock, and thereafter accepts a proposition from another company to buy a majority of the stock and liquidate its affairs, the agreement is void as against public policy as a scheme to annihilate the fire insurance company without dissolution proceedings as required by this section. *Gerrett Co. v. Morton*, 35 Misc., 10.

INSOLVENCY.—An insurance company cannot be said to be insolvent, or to act in contemplation of insolvency, merely because the sums insured greatly exceed its capital; nor when its assets are more than sufficient to meet all losses of which the company has any notice, information or suspicion. *Holbrook v. Basset*, 5 Bosw., 147.

It is enough to prevent the dissolution of the company if the assets are sufficient at the time of the hearing before the referee though insufficient at the time when the application for dissolution was presented. In the *Matter of World's Safe Ins. Co.*, 40 Barb., 499.

FRAUDULENT TRANSFER.—Where an insurance company, being insolvent, distributes its capital among its stockholders, thus placing the fund beyond the reach of its creditors, the fund may be recovered back from those who received it, by a proper action. *Osgood v. Laytin*, 3 Abb. Ct. of App.; 3 Keyes, 521; aff'g 48 Barb., 463.

§ 42. Stockholders to make good impairment or deficiency.

Upon the receipt of the requisition of the superintendent of insurance specified in the last preceding section, the directors of the corporation shall forthwith call upon its stockholders ratably for such amounts as will make up such impairment or deficiency.

If any stockholder refuses or neglects to pay the amount called for after notice, personally given or by advertisement, in such time and manner as the superintendent shall approve, the directors may require the return of the certificate of stock held by the stockholder, and in lieu thereof issue to him new certificates for such number of shares as he may be entitled to in the proportion that the ascertained value of the assets of the corporation as determined by the superintendent bears to its original capital, the corporation paying for any fractional parts of shares.

The directors may create new stock and issue certificates therefor and dispose of the same at not less than par for an amount sufficient to make up the original capital of the corporation.

For any losses accruing upon new risks taken after the expiration of the period limited by the superintendent in any such requisition and before such impairment or deficiency shall be

made up, the directors of the corporation shall be jointly and severally individually liable to the extent thereof.

Any transfer of stock made during the pendency of any such examination or after any such report shall have been made and before any impairment or deficiency specified in any such requisition shall be made good, shall not release the person making the transfer from his liability for losses accrued previous to such transfer.

Source.—Former § 42; originally revised from L. 1849, chap. 308, § 13, as amended by L. 1864, chap. 425, and § 23 as added by L. 1866, chap. 577; L. 1853, chap. 466, § 24.

IMPAIRMENT OF CAPITAL.—The superintendent of insurance having made requisition upon a fire insurance company to make good an impairment of its capital, cannot withdraw the same. Attorney-General Rep., 1897, page 254.

§ 43. Impaired mutual insurance corporations.

If it appears to the superintendent from an examination made by him or by an examiner appointed by him that the assets or capital of any mutual insurance corporation are insufficient to justify its continuance in business, he shall determine the amount of such deficiency and issue a written requisition to the officers of the corporation requiring them to make it good within a time to be specified therein, not less than thirty nor more than ninety days from the service of such requisition. Such service may be made by mail, directed to the corporation at its place of business in this state specified in its charter. Upon the service of such requisition the directors of the corporation shall forthwith cause such deficiency to be made good, and proof to be filed with the superintendent within the time specified in the requisition that the same has been made good.

For any losses accruing upon new risks taken after the expiration of such time, and before such deficiency shall be made good, the directors of the corporation shall jointly and severally be personally liable therefor. If such deficiency shall not be made good within the time specified in such requisition and satisfactory proof thereof filed with the superintendent, the corporation shall be deemed insolvent and may be proceeded against by the attorney-

general as an insolvent corporation in the manner authorized by law.

Source.—Former § 43; originally revised from L. 1849, chap. 308, § 13, as amended by L. 1864, chap. 425, and § 23, as added by L. 1866, chap. 577; L. 1853, chap. 466, § 24.

CONTINUANCE OF BUSINESS.—The question as to the continuance in business of a mutual insurance company is to be determined by the superintendent under this section; § 41 does not apply at all, and § 118 applies only in part to a mutual insurance company. *People ex rel. Long Island Mut. v. Payn*, 26 App. Div., 584; 50 N. Y. Supp., 334.

The provisions of this section do not operate as a limitation upon those provisions of the Code of Civil Procedure defining the cases in which the attorney-general may institute an action of this character; cases might arise where the delay of thirty days contemplated by § 43 might work irreparable injury and where immediate action is called for. *People v. Equitable Mut. Ins. Co.*, 1 App. Div., 85.

§ 44. Reports of corporations.

Every corporation, engaged wholly or in part in the transaction of the business of insurance in this state, whether heretofore or hereafter incorporated by a general or special law, shall annually, on the first day of January, or within two months thereafter, if a corporation under article two of this chapter, and on or before the fifteenth day of February, if a corporation under the other articles of this chapter, file in the office of the superintendent of insurance a statement verified by the oath of at least two of the principal officers of such corporation, showing its condition on the thirty-first day of December then next preceding which shall be in such form and shall contain such matters as the superintendent shall prescribe. If a foreign corporation incorporated under the laws of a state or country outside of the United States such oath may be made by the manager thereof within the United States.

The superintendent may also address any inquiries to any such insurance corporation or its officers in relation to its doings or condition, or any other matter connected with its transactions. Every corporation so addressed shall promptly and truthfully reply in writing to any such inquiries, and such reply shall be verified, if required by the superintendent, by such officer of the corporation as he shall designate.

Source.—Former § 44, as amended by L. 1897, chap. 493; originally revised from L. 1849, chap. 308, § 7, and § 13, as amended by L. 1864, chap. 425; L. 1851, chap. 95, § 4; L. 1853, chap. 463, § 12 and §§ 14 and 15, as amended by

L. 1862, chap. 300; L. 1853, chap. 466, § 22, as amended by L. 1854, chap. 369; L. 1861, chap. 326, § 2; L. 1861, chap. 334, § 1; L. 1865, chap. 199, § 2, as amended by L. 1867, chap. 709; L. 1865, chap. 328, § 3; L. 1866, chap. 843; L. 1869, chap. 902, § 14; L. 1885, chap. 538, § 18; L. 1886, chap. 611, § 16.

Amended by L. 1910, chap. 634.

See § 665, Penal Law. Misconduct of officers and employees.

See §§ 1194, 1195, 1197, Penal Law. Misconduct of agents in certain insurance companies.

FOREIGN CORPORATION.—Within the meaning of the insurance law a foreign corporation includes one incorporated under the laws of another state of the United States. In re Penn. Fire Ins. Co., Attorney-General Rep., 1895, page 56.

Section 20 of the Banking Law which requires that reports of certain corporations shall contain a statement of conditions on a particular day, does not contemplate that the market price of stocks established on that particular day shall be the value to determine the condition of the corporation on that day, but that the value of the stock investments shall be the estimated market value. Attorney-General Rep., July 19, 1907.

The requirement of the charter of a company, incorporated before the passage of first general insurance law in 1849, as to a general balance statement, is not in conflict with sections 44 and 45 of the Insurance Law, imposing the duty of filing reports with the Superintendent of Insurance. Attorney-General Rep., March 21, 1912.

VERIFICATION.—It is not necessary that the oath of the officers of insurance companies should precede the preparation of their annual statement, but after it has been prepared it should be verified with their oaths. Case v. People, 6 Abb. N. C., 151.

FALSE STATEMENT.—An action does not lie by a stockholder of a mutual insurance company to declare the franchise forfeited, and enjoin its exercise, and have a receiver appointed, on the ground that the defendants made a false annual statement. Fisher v. World Mut. Life Ins. Co., 15 Abb. Pr., N. S., 363.

§ 45. Forms of report to be furnished by superintendent.

The superintendent shall cause to be prepared and furnished to every corporation required by the provisions of this chapter to report to him, printed forms of the reports and statements required of such corporations. He may make such changes from time to time in the form of the same as shall seem to him best adapted to elicit from such corporations a true exhibit of their condition in respect to the several matters which they are required to report, or in respect to any other matters which he may deem material. The report of any corporation, the capital of which is composed in whole or in part of notes, shall, in addition to the foregoing, exhibit the amount of notes originally forming its capital, and also

what proportion of such notes is still held by the corporation and considered capital.

If a corporation, incorporated under the laws of any state or country outside of the United States, such report with respect to the business done and assets held by or for the corporation, shall only contain a statement of the business done and assets held by or for it within the United States for the protection of all policy holders residing within the United States, and shall not contain any statement in regard to its assets and business elsewhere. In addition to any other penalty prescribed by law, every insurance corporation failing to make and file the reports and statements required by this chapter or to reply to any inquiry of the superintendent, shall forfeit to the people of the state five hundred dollars for the first offense, and an additional five hundred dollars for every month that such corporation shall thereafter continue to transact any business of insurance in this state.

Source.—Former § 46, as amended by L. 1906, chap. 326; originally revised from L. 1849, chap. 308, § 13, as amended by L. 1864, chap. 425; L. 1853, chap. 463, § 12; L. 1853, chap. 466, § 22, as amended by L. 1854, chap. 369; L. 1861, chap. 334, § 2; L. 1880, chap. 110, § 2; L. 1882, chap. 235, § 1; L. 1885, chap. 538, § 18; L. 1886, chap. 611, § 16.

See § 665, Penal Law. Refusal or neglect of officer of corporation to make any report is a misdemeanor.

FOREIGN CORPORATION.—Within the meaning of the Insurance Law, a foreign corporation includes one incorporated under the laws of another state of the United States. *In re Penn. Fire Ins. Co.*, Attorney-General Rep., 1895, page 56.

Where certain foreign ocean marine insurance companies doing business within this state collect the premiums within the state though losses upon which the certificates are made are payable abroad, the annual report of such companies should contain a statement of its losses paid abroad when such losses are upon policies written in this state. Attorney-General Rep., Feb. 20, 1911.

The requirement of the charter of a company, incorporated before the passage of first general insurance law in 1849, as to a general balance statement, is not in conflict with sections 44 and 45 of the Insurance Law, imposing the duty of filing reports with the Superintendent of Insurance. Attorney-General Rep., March 21, 1912.

A foreign reinsurance corporation authorized to do a fire reinsurance business in this State, must report to the New York Superintendent of Insurance all business done in the United States with direct writing companies therein, regardless of the facts that the business is done through foreign offices, and not through the United States branch of the company, or that the property insured is located in Canada, Mexico or Cuba; and such foreign corporation must maintain in the United States the proper unearned premium and unpaid loss reserves thereon. Attorney-General Op., June 22, 1915.

§ 46. Annual report of superintendent.

The superintendent of insurance shall annually transmit to the legislature at the opening of its session, or within ninety days thereafter, a report containing the statements and reports made to him pursuant to the provisions of section forty-four of this chapter, as such statements and reports shall be audited and corrected by him, all arranged in tabular form, or in abstracts, in classes according to the kind of insurance made by the corporation, which report shall also contain:

1. A statement of all insurance corporations authorized to do business in this state during the year ending the thirty-first day of December next preceding, with their names, locations, amounts of capital, dates of incorporation, and of the commencement of business, and kinds of insurance in which they are engaged respectively.

2. A statement of the insurance corporations whose business has been closed during such year and the reasons for closing the same, with the amount of their assets and liabilities so far as the same are known, or can be ascertained by him.

3. Any amendments to this chapter which in his judgment may be desirable.

4. The names and compensation of the clerks employed by him, and the whole amount of the expenses of the department.

In addition to the usual number of copies for the use of the legislature, there shall be printed and in readiness for distribution by the printer employed to print legislative documents, two thousand copies of such report for the use of the department.

Source.—Former § 46; originally revised from L. 1849, chap. 308, § 13, as amended by L. 1864, chap. 425; L. 1853, chap. 463, § 13, as amended by L. 1873, chap. 849; L. 1853, chap. 466, § 22, as amended by L. 1854, chap. 369; L. 1859, chap. 366, § 3, as amended by L. 1866, chap. 514; L. 1885, chap. 538, § 18; L. 1886, chap. 611, § 16.

Amended by L. 1909, chap. 301; L. 1910, chap. 634, and L. 1912, chap. 89.

§ 47. Deceptive statements prohibited.

No insurance corporation doing business in this state, or agent thereof, shall state or represent by advertisement in any newspaper, periodical or magazine, or by any sign, circular, card, policy of

insurance or certificate of renewal thereof or otherwise, that any funds or assets are in possession of any such corporation not actually possessed by it and available for the payment of losses and claims, and held for the protection of its policy holders or creditors.

Source.—Former § 47; originally revised from L. 1877, chap. 241, § 1.

See § 665, Penal Law. Misconduct of officers and employees of corporations as to making reports.

See §§ 1194, 1195, 1197, Penal Law. Misconduct of agents in certain insurance companies.

See § 1203, Penal Law. Issue and circulation of false literature.

§ 48. Contents of advertisements.

Every advertisement or public announcement, and every sign, circular or card issued by any insurance corporation or association incorporated by or existing under the laws of this state or of any other state of the United States and doing business in this state purporting to make known its financial standing, shall exhibit the amount of the capital actually paid in in cash, the assets owned, the liabilities, including therein the premium and loss reserves required by law, and the amount of net surplus of assets over all its liabilities actually available for the payment of its losses and claims, and held for the protection of its policy holders, and shall correspond with the verified statement made by it to the insurance department next preceding the making or issuing of the same. Every advertisement or public announcement, and every sign, circular or card issued by any insurance corporation or association incorporated by or existing under the government or laws of a country outside of the United States and doing business in this state, purporting to make known its financial standing, shall exhibit as capital and as assets only the capital and assets held by its United States branch, the liabilities, including therein the premium and loss reserves required by law, and the amount of net surplus of assets over all its liabilities actually available for the payment of its losses and claims and held for the protection of its policyholders in the United States, and shall correspond with the verified statement made by it to the insurance department next preceding the making or issuing of the same.

For every violation of this and the preceding section by any such corporation, it shall forfeit for the first offense to the people of the state the sum of five hundred dollars, and for every subsequent offense the sum of one thousand dollars, which sums, when recovered, shall be paid into the treasury of the state. This section shall not apply to any life insurance corporation nor to any domestic or foreign insurance corporation or association engaged solely in the business of marine or transportation insurance or in such business in connection with the business of automobile insurance.

Source.—Former § 48; originally revised from L. 1877, chap. 241, §§ 2-4.

Amended by L. 1913, chap. 205.

Note.—The purpose of the amendment of this section by chapter 205 of 1913 was to compel foreign fire or casualty companies in every advertisement or public announcement to give a statement of the capital and assets held by the United States branch.—Ed.

See § 665, Penal Law. Misconduct of officers and employees of corporations as to making or publishing false statement.

ADVERTISEMENT.—Every advertisement made by an insurance company as to the amount of its resources must state the amount of its capital paid up in cash. Attorney-General Rep., 1892, page 269.

§ 49. Agents.

Every agent of any insurance corporation doing business in this state shall, in all advertisements of such agency, publish the location of the corporation, giving the name of the city, town or village in which it has its principal business office, and the state or government under the laws of which it is organized.

The term, "agent," in this chapter shall include an acknowledged agent or surveyor or any other person who shall in any manner aid in transacting the insurance business of any insurance corporation not incorporated by the laws of this state, and any broker whose business, in whole or in part, is to negotiate for and place risks, deliver the policies covering the same and collect premiums therefor.

Source.—Former § 49; originally revised from L. 1849, chap. 308, § 7; L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter and verified statement to be filed in office of superintendent of insurance.

See § 31, ante. Agent not to transact business until certificate is filed in county clerk's office.

See § 32, ante. Renewal of certificate.

See § 50, post. Agent's certificate of authority.

See § 53, post. Penalty for violation of Insurance Law.

See § 54, post. Agents not to act for unauthorized corporations.

See § 91, post. Certificate of authority of agents.

See § 137, post. License to agents in certain cases.

The general superintendent of agencies of an insurance company assisting an agent in closing difficult cases is within the meaning of "agent" in § 49. Ruling Ins. Dept., Dec. 23, 1910.

REVOCATION.—Where an insurance company, at the time of the revocation of an existing agency, gave no public notice of the same, and left with the former agent policies in blank, signed by the company, such revocation is not effective as against a person subsequently insured in such company by such agent, in the absence of any proof that such revocation of authority was known to him at the time of the issuance to him of the policy. *Marshall v. Reading Fire Ins. Co.*, 78 Hun, 83.

DEFINITION.—The definition of an agent as contained in this section will not be imported into chap. 641 of 1892 in order to bring agents of the insured within the penalty of that statute and defeat a recovery by them on the agreement. *Romberg v. Kouther*, 27 Misc., 227.

ENTIRE MANAGEMENT.—There is no warrant in law for the making of a contract which substantially places the entire management of the business of the company in the hands of a general agent. *Attorney-General Rep.*, 1897, page 114.

There is no provision in the insurance law which warrants the transfer of corporate rights and franchises to an individual acting as general agent in another state. *Attorney-General Rep.*, 1896, page 276.

LIMITATION OF AUTHORITY.—The powers possessed by agents of insurance companies are to be interpreted in accordance with the general law of agency. Where restrictions upon the agent's authority appear in a policy the insured is bound to take notice of them, and in the absence of evidence tending to show that his powers have been enlarged by the usage of the company, its course of business or by consent, express or implied, the policy must control, and the authority, as limited, must be regarded as the measure of the agent's power. *Quinlan v. P. W. Ins. Co.*, 133 N. Y., 356.

In determining the authority of agents, their instructions are not necessarily controlling, and, although an agent be instructed to do one thing or to exercise only a limited authority, if he is knowingly habitually suffered to exercise a greater authority, the principal is bound by the authority he has allowed his agent to exercise, notwithstanding his instructions to the contrary. *Powers v. Prudential Ins. Co.*, 83 Hun, 254; *aff'd* 145 N. Y., 654.

Where the power of an agent is apparently limited, a person dealing with him is bound to inquire concerning the extent of his authority before acting upon the faith of its existence; and a principal who has not clothed an agent with either real or seeming authority is not bound by the simple declaration of such agent that the principal is bound by his acts or statements. *Allen v. St. Lawrence F. Ins. Co.*, 88 Hun, 461.

Authority to an agent to solicit applications for life insurance does not give him authority to collect premiums. *Howell v. Charter Oak Ins. Co.*, 2 Wk. Dig., 383.

An agent authorized to represent one company may not, in case his company takes part of a proposed risk, place the remaining portion of the risk with another company through that other company's agent. Attorney-General Rep., Feb. 8, 1908.

AGENT'S CONTRACT.—When a contract between an agent and insurance company is entered into without any fraud or misrepresentation on the part of the company, the agent is bound by its terms, even though it be a hardship. *Levitt v. Prudential Ins. Co.*, 39 St. Rep., 91.

Where the contract of employment of a life insurance agent requires him to devote his entire time and energies for a term of years in procuring applications for insurance in the company so employing him and to act exclusively for such company, and his compensation depends upon the premiums on policies issued through his instrumentality, he is entitled to have applications offered by him treated in good faith, and cannot be deprived of his compensation by an arbitrary rejection of a claim procured by him. *Madden v. Equitable Life Assur. Soc.*, 11 Misc., 540.

FIRM.—Where a firm is appointed to an agency, such agency ceases upon the death of one of the members of the firm, and the principal is not bound by the subsequent acts of the surviving member. *Martine v. International L. Ins. Soc.*, 53 N. Y., 339.

CLERKS.—An ordinary agent of an insurance company has power to hire as many clerks as may be necessary to do the business of the agency, and a provision in an insurance policy that no one not holding a commission shall be considered as its agent, does not prevent the employment by a commissioned agent of the usual and necessary clerical and other assistants to enable him to properly perform his duties. *Arff v. Star Ins. Co.*, 125 N. Y., 57.

§ 50. Agent's certificate of authority.

No person or corporation shall act as agent for any foreign insurance corporation in the transaction of any business of insurance within this state, or negotiate for or place risks for any such corporation, or in any way or manner aid such corporation in effecting insurances or otherwise in this state, unless such corporation shall have fully complied with the provisions of this chapter. Every such agent shall, annually, on the first day of January, or within six months thereafter, procure a certificate of authority from the superintendent of insurance, who shall file in his office evidence of the issuance of such certificate to the agent aforesaid. Any person or corporation violating the provisions of this section shall forfeit to the people of the state the sum of five hundred dollars for the first offense, and an additional sum of one hundred dollars for each month during which any such person or corporation shall continue to act in violation of this section. This

section shall not apply to the agents of corporations transacting business under the provisions of article six of this chapter.

Source.—Former § 50, as amended by L. 1893, chap. 725; originally revised from L. 1853, chap. 466, § 23, as amended by L. 1875, chap. 555.

Amended by L. 1909, chap. 301.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter and verified statement to be filed in office of superintendent of insurance.

See § 31, ante. Agent not to transact business until certificate is filed in county clerk's office.

See § 32, ante. Renewal of certificate.

See § 49, ante. Any person aiding in the transaction of business of foreign corporation is deemed an agent thereof.

See § 53, post. Penalty for violation of Insurance Law.

See § 54, post. Agents not to act for unauthorized corporations.

See § 91, post. Certificate of authority of agents.

See § 137, post. License to agents in certain cases.

See § 1192, Penal Law. Overcharges by marine insurance agents.

See § 1197, Penal Law. Acts as agent of foreign corporation which failed to obtain certificate to do business in this state.

See §§ 1198, 1199, Penal Law. Misconduct of agents.

FOREIGN CORPORATION.—Within the meaning of the insurance law, a foreign corporation includes one incorporated under the laws of another state of the United States. *In re Penn. Fire Ins. Co.*, Attorney-General Rep., 1895, page 56.

AGENTS.—Corporations may act as agent for insurance companies when expressly authorized so to do by their charters, and not otherwise. *In re Carpenter & Co.*, Attorney-General Rep., 1893, page 369.

The superintendent of agencies of a foreign corporation coming into the state and assisting and co-operating with agents in closing difficult cases should have an agent's license. *Ruling Ins. Dept.*, Dec. 23, 1909.

An unauthorized corporation cannot act as agent for procuring insurance within this state. July 22, 1897.

A domestic corporation organized to conduct a general insurance agency may be licensed to act as such agent. Nov. 16, 1893.

A general agent in this State signing policies issued by a foreign company comes within the penalty of the section. Attorney-General Rep., June 2, 1904.

A foreign life company not authorized to do business in this State cannot establish an agency in this State solely to collect premiums. Attorney-General Rep., Sept. 19, 1907.

Where the Penal Code has been violated, both by a foreign company and its agent, the matter should be referred to the District Attorney. Attorney-General Rep., April 2, 1907.

DEMURRER.—A complaint in an action brought to recover for services rendered in placing insurance for the defendant, a foreign insurance corporation, in the state of New York, is not demurrable because it fails to allege affirmatively that the defendant has complied with the provisions of the Insurance Law, and that consequently the agreement of the plaintiff to act as

its agent was not unlawful under this section. *Crichton v. Columbia Ins. Co.*, 81 App. Div., 614.

ADJUSTMENT.—An agent of a foreign insurance company can adjust a loss without procuring a certificate. *People ex rel. McCall v. Gilbert*, 44 Hun, 522.

POLICY VALID.—The failure of a foreign insurance corporation to do the acts required by this section does not avoid a policy issued by it. *Marshall v. Reading Fire Ins. Co.*, 78 Hun, 83; *aff'd* 149 N. Y., 617.

§ 51. Examination of securities deposited by officers of corporation.

Every insurance corporation having securities deposited in the office of the superintendent of insurance, shall, once or more during each calendar year, and at such time or times during the ordinary business hours as the corporation may select, cause such securities to be examined by its president, secretary, actuary, or other officer or agent whom it may designate for that purpose, to be compared with the books of the insurance department, and if found correct, to execute to the superintendent of insurance a receipt or certificate setting forth in the same the different kinds of such securities and the amounts thereof, and that the same are in the possession and custody of the superintendent at the date of such receipt.

Source.—Former § 51; originally revised from L. 1869, chap. 902, § 16.

§ 52. Reorganization of existing corporations and amendment of certificates.

Any domestic corporation existing or doing business on October first, eighteen hundred and ninety-two, may, by a vote of a majority of its directors or trustees accept the provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any or all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated thereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter, and filing the same and

the record of adoption and consent in the office of the superintendent of insurance, perpetually enjoy the same as and be such corporation, which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the periods for which they were elected, and all others shall be filled in the same manner by such amended charter provided. Every domestic insurance corporation may amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and may also eliminate therefrom unnecessary words or verbiage, or any powers which have never been exercised or are not at the time being exercised, provided that proof of the non-exercise of powers, satisfactory to the superintendent of insurance, shall be filed in the insurance department, and, if any business has been written under the powers proposed to be eliminated, the fact that all liability incident to such powers has been fully terminated shall be shown to the satisfaction of such superintendent through an examination of such corporation or otherwise as he may require; and may likewise amend its charter or certificate of incorporation, by inserting therein or adding thereto any powers which, at the time of such amendment, may have been conferred by law upon domestic insurance corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a domestic insurance company organized under any general law of this state for a business of the same general character; and the same proceedings shall be taken upon the presentation of such amended charter or certificate or amendment to such charter or certificate, to the superintendent of insurance, as are required by this chapter to be taken with respect to an original charter or certificate, except that no examination of the condition and affairs of such corporation shall be required unless so ordered by the superintendent, and if the amended charter or certificate or amendment be approved by the superintendent of insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such charter or certificate as so amended had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued. Upon the reincorporation or upon the amendment of the charter of any life insurance corporation, hav-

ing a capital stock, in accordance with the provisions of this section, it may by a vote of a majority of its directors confer upon its policy holders or upon such policy holders as may have a prescribed amount of insurance upon their lives the right to vote for all or any less number of the directors in such manner not inconsistent with any provision of this chapter as may be authorized by a vote of the stockholders representing at least a majority of the capital stock at a meeting of stockholders called for the purpose. Section eighteen of the stock corporation law shall not apply to such a corporation. This section shall apply to insurance corporations organized under or subject to article six of this chapter as well as to insurance corporations organized under a special act or any general law or article two of this chapter. In the case of any corporation organized under or subject to article six of this chapter, which corporation has amended its charter and is now operating under article two of this chapter, all contracts, policies and certificates issued prior to its reincorporation, shall be valued as one year term insurance at the ages attained excepting when such contracts, policies or certificates shall provide for a limited number of specified premiums or for specified surrender values, in which case they shall be valued as provided in article two, section eighty-four of this chapter.

But no life insurance corporation shall hereafter be permitted to avail itself of the provisions of this section unless it shall hold for all its outstanding policies or certificates assets equal in value to the minimum reserve required by section eighty-four of this chapter. Whenever any domestic insurance corporation changes the number of its directors or increases or reduces the amount of its capital stock, pursuant to and in conformity with the provisions of the stock corporation law, it may file in the office of the superintendent of insurance a complete copy of its charter, duly authenticated, containing the changes of its capital stock or its directors, or both, as the case may be. Such charter shall not be filed until it has attached thereto the certificate of approval of the attorney-general, as provided in section ten of this chapter.

Source.—Former § 52, as amended by L. 1893, chap. 725; L. 1901, chap. 722; L. 1905, chap. 574, and L. 1906, chap. 326; originally revised from L. 1860, chap. 328, § 3.

Amended by L. 1910, chap. 634; L. 1911, chap. 47, and L. 1913, chap. 48.

Note.—The purpose of the amendment of this section by chapter 48 of 1913 was to remove from the law certain unnecessary and cumbersome procedures in relation to the reorganization of existing corporations and the amendment of the certificates.—Ed.

Note.—Section 52 was amended by L. 1911, chap. 47, so as to make it possible for insurance corporations to give up certain powers provided in their original articles of incorporation which they may never have exercised, or, if exercised, abandoned.—Ed.

See § 206, post. Reincorporation of co-operative insurance companies.

TRANSFER.—There is no provision in the Insurance Law which warrants the transfer of corporate rights and franchises to an individual acting as general agent in another state. Attorney-General Rep., 1896, page 276.

The provision of this section that "this section shall apply to insurance companies organized under or subject to article VI" was not intended to prevent insurance companies organized under the other articles of the Insurance Law from amending their charters by inserting therein any statement or matter which might have been originally inserted therein. In re Lawyers' Mort. Co., Attorney-General Rep., 1905, page 453.

When the legislature reserves the right to amend or repeal charters, a law permitting mutual life associations to reincorporate as regular life insurance companies is not unconstitutional as impairing the obligations of contracts or depriving the policy holders of property without due process of law. Wright v. Minn. Mut. Life Ins. Co., 193 U. S., 657.

The right to repeal or amend charters is equally effectual whether it be reserved in the original act of incorporation, the articles of association under a general law, or in the Constitution of the state. Polk v. Mut. Reserve Fund, 207 U. S., 310.

Amendments to charter of an insurance company, which do not enlarge its franchises, do not render necessary a republication of the notice of intention to organize.

An insurance company whose charter and declaration were filed and approved, but which was not organized under the former law, may be organized under the present Insurance Law without republication of notice. In re Great Eastern Cas., etc., Co., Attorney-General Rep., 1892, page 394.

Section 52, as amended by chap. 722 of 1901 (and since this decision amended by chap. 326 of 1906), when taken together with the charter of the defendant, incorporated under chap 463 of 1853, cannot be construed as an act of the legislature authorizing the board of directors to alter the corporate control of the company by giving to policyholders power to participate in the election of directors, and in the absence of express legislation permitting it said directors have no such power. Lord v. Equitable Life Assur. Soc., 109 App. Div., 253, below; 47 Misc., 187.

The legislature by the amendment of § 52 by chap. 326 of 1906, enfranchised policyholders with the consent of stockholders holding a majority of the stock, to vote for directors and had the power to do so; while the directors had the right to limit the powers of the policyholders to vote for only a part of the directors, they had no right to thus limit the power of the stockholders. Lord v. Equitable Life Assur. Soc., 194 N. Y., 212, rev'g 126 App. Div., 937.

The provisions of chap. 326 of 1906, although they take from the stockholders of an existing corporation the right to vote for all of the directors and give to the policyholders an exclusive right to vote for a majority of them, are not for that reason unconstitutional. Lord v. Equitable Life Assurance Society, 57 Misc., 417.

BOARD OF DIRECTORS.—Section 52, in regard to the amendment of a charter of a corporation, contemplates corporate action by the board of directors only and not the corporate action of the stockholders. *Lord v. Equitable Life Assur. Soc.*, 47 Misc., 187; *aff'd* 109 App. Div., 252.

ASSESSMENT LIFE INSURANCE.—A company formed for the purpose of transacting the business of assessment life insurance cannot alter its charter to include casualty insurance if thereby the acquired rights and liabilities of existing policyholders are altered. *Attorney-General Rep.*, 1892, page 293.

TAX.—A corporation formed by the consolidation of previously existing corporations is liable to a tax of one-eighth of one per cent on the amount of its capital stock required to be paid on filing incorporation papers, though each of the corporations so consolidated paid such tax on its own incorporation. *People v. Rice*, 11 N. Y. Supp., 249.

VALUATION.—When an insurance company originally organized as a fraternal organization has thereafter successively incorporated as a mutual company and as a stock company, under chapter 690 of the Laws of 1893, the valuation of policies issued when the corporation was a mutual company for the purpose of ascertaining the amount of reserve, should be made under § 52 of the Insurance Law, if such valuation does not violate any provision, express or implied, of the original contract of insurance; the reserve need not be determined by valuing such policies as whole life policies under § 86 of the Insurance Law. *Elder v. Bankers' Life Insurance Co.*, 117 App. Div., 722.

A surety corporation incorporated on June 9, 1897, may not change the number of directors or increase its capital stock by amending its charter under section 52 but must proceed under sections 26 and 64 of the Stock Corporation Law. *Attorney-General Rep.*, Jan. 24, 1911.

§ 53. General penalties.

Any corporation or person violating any provision of this chapter, except where such violation constitutes a felony, shall in addition to any penalty otherwise prescribed for such violation, be guilty of a misdemeanor.

Source.—Former § 53, as amended by L. 1906, chap. 326; originally revised from L. 1851, chap. 95, § 9; L. 1853, chap. 463, § 18; L. 1871, chap. 888, § 9; L. 1877, chap. 439, § 3, as amended by L. 1881, chap. 628; L. 1879, chap. 489, § 5; L. 1880, chap. 110, § 5; L. 1880, chap. 428, § 3.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter and verified statement to be filed in office of superintendent of insurance.

See § 31, ante. Agent not to transact business until certificate is filed in county clerk's office.

See § 32, ante. Renewal of certificate.

See § 49, ante. Any person aiding in the transaction of business of foreign corporation is deemed an agent thereof.

See § 50, ante. Agent's certificate of authority.

See § 54, post. Agents not to act for unauthorized corporations.

See § 91, post. Certificate of authority of agents.

See § 137, post. License to agents in certain cases.

PENALTY.—To maintain an action to recover the penalty imposed by the act of 1853 it is not necessary to set forth the statute in the complaint; it is sufficient to state that the acts complained of were in violation of the insurance statutes of the state. *People v. McCann*, 67 N. Y., 506.

LLOYDS.—Lloyds associations cannot engage in the business of insurance in this state except as agents of persons or corporations so authorized unless possessed of capital required of insurance corporations doing the same kind of business in this state and invested in the same manner; a violation of the provisions of § 54 of the Insurance Law is not a criminal offense; the only remedy is by an action for a penalty under § 53. In *re Derrick*, Attorney-General Rep., 1903, page 277. But see Art. X.

§ 54. Conduct of insurance business by persons not incorporated.

No person, partnership, or association of persons shall engage in the business of insurance in this state except as agent of a person or corporation authorized to do the business of insurance in the state, unless possessed of the capital required of an insurance corporation doing the same kind of business in the state and invested in the same manner; nor unless he or they shall have made and deposited with the superintendent of insurance securities of the same amount required of an insurance corporation doing business in this state, nor unless the superintendent of insurance shall have granted to him or them a certificate to the effect that he or they have complied with all the provisions of law which an insurance corporation doing business in this state is required to observe, and that the business of insurance specified therein may be safely intrusted to the person, partnership or association of persons to whom the certificate is granted.

Every person, partnership or association receiving any such certificate of authority shall be subject to the insurance laws of the state and to the jurisdiction and supervision of the superintendent of insurance in the same manner as if an insurance corporation authorized by the laws of the state to engage in the business of insurance specified in the certificate.

No such person, partnership or association shall transact business under a corporate or fictitious name or under any name, style or title other than the true name of such person, or of the persons comprising such partnership or association.

Source.—Former § 54; originally revised from L. 1853, chap. 463, §§ 14, 15, as amended by L. 1863, chap. 300; L. 1877, chap. 439, § 2, as amended by L. 1881, chap. 628.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter and verified statement to be filed in office of superintendent of insurance.

See § 31, ante. Agent not to transact business until certificate is filed in county clerk's office.

See § 32, ante. Renewal of certificate.

See § 50, ante. Agent's certificate of authority.

See § 53, ante. Penalty for violation of insurance law.

See § 91, post. Certificate of authority of agents.

See § 137, post. License to agents in certain cases.

CORPORATIONS.—Corporations may act as agents for insurance companies when expressly authorized so to do by their charters, and not otherwise. In re Carpenter & Co., Attorney-General Rep., 1893, page 369.

DEMURRER.—A complaint in an action by a foreign corporation is not demurrable for its failure to show that they have been duly authorized to do business within the state of New York as the fact of compliance is not a necessary part of the complaint, the failure to comply being a matter of defense. *Thompson v. Colonial Assur. Co.*, 33 Misc., 37.

Where a tailor is hired to make up into trousers material supplied by the employers, and the latter agree to pay the tailor the value of his labor put upon the material, although it should be damaged or destroyed by fire, in consideration of the deduction of one per cent of the agreed price of the labor, the contract is one of employment and not of insurance within the meaning of the Insurance Law, and is not invalid under the provisions of §§ 54, 58 and 59 of that law. *Stern v. Rosenthal*, 71 Misc., 422.

LLOYDS.—Lloyds associations cannot engage in the business of insurance in this state except as agents of persons or corporations so authorized unless possessed of capital required of insurance corporations doing the same kind of business in this state and invested in the same manner; a violation of the provisions of § 54 of the Insurance Law is not a criminal offense; the only remedy is by an action for a penalty under § 53. In re Derrick, Attorney-General Rep., 1903, page 277. But see Art. X.

§ 55. Insurance without the consent of the insured prohibited.

No policy of insurance shall be issued upon any property except upon the application and in the name of some person having an interest in the property. No policy or agreement for insurance shall be issued upon the life or health of another or against loss by disablement by accident except upon the application of the person insured; but a wife may take a policy of insurance upon

the life or health of her husband or against loss by his disablement by accident; an employer may take out a policy of insurance covering his employees collectively for the benefit of such as may suffer loss from injury, death or disablement resulting from sickness, and a person liable for the support of a child of the age of one year and upward may take a policy of insurance thereon, the amount payable under which may be made to increase with advancing age and which shall not exceed the sums specified in the following table, the ages wherein specified being the ages at time of death, for an amount not exceeding the sum specified in the table:

Between the ages of one and two years, thirty dollars.

Between the ages of two and three years, thirty-four dollars.

Between the ages of three and four years, forty dollars.

Between the ages of four and five years, forty-eight dollars.

Between the ages of five and six years, fifty-eight dollars.

Between the ages of six and seven years, one hundred and forty dollars.

Between the ages of seven and eight years, one hundred and sixty-eight dollars.

Between the ages of eight and nine years, two hundred dollars.

Between the ages of nine and ten years, two hundred and forty dollars.

Between the ages of ten and eleven years, three hundred dollars.

Between the ages of eleven and twelve years, three hundred and eighty dollars.

Between the ages of twelve and thirteen years, four hundred and sixty dollars.

Between the ages of thirteen and sixteen years, five hundred and twenty dollars.

Between the ages of sixteen and seventeen years, six hundred and twelve dollars.

Between the ages of seventeen and eighteen years, seven hundred dollars.

Between the ages of eighteen and nineteen years, seven hundred and eighty-four dollars.

Between the ages of nineteen and twenty years, eight hundred and fifty-five dollars.

Between the ages of twenty and twenty-one years, nine hundred and thirty dollars.

In respect of insurance heretofore or hereafter, by any person not of the full age of twenty-one years but of the age of fifteen years or upwards, effected upon the life of such minor, for the benefit of such minor or for the benefit of the father, mother, husband, wife, brother or sister of such minor, the assured shall not, by reason only of such minority, be deemed incompetent to contract for such insurance or for the surrender of such insurance, or to give a valid discharge for any benefit accruing, or for money payable under the contract.

Source.—Former § 55, as amended by L. 1902, chap. 437; new.

Amended by L. 1910, chap. 634, and L. 1913, chap. 519. In effect May 15, 1913.

Note.—The purpose of the amendment of this section by chap. 519 of 1913 was to authorize employers to take out policies covering employees collectively for the benefit of such as might suffer loss from death or disablement resulting from sickness; formerly such policies were limited to accident insurance.—Ed.

Note.—Before the amendment of this section by chap. 634 of 1910, a person liable for the support of a child could only take out a yearly renewable term policy, but this limitation as to the form of policy was stricken out by said amendment.—Ed.

See § 52, Domestic Relation Law, chap. 19 of 1909. Insurance by wife of husband's life.

See Personal Property Law, § 15. Personal property not alienable in certain cases.

A policy issued prior to the enactment of this section insuring a manufacturing company against loss to property from an explosion or rupture of boilers, "also against loss of human life or injury to person, whether to the assured, the employees, or to any other person or persons, caused by such explosion or rupture, payable to the assured for the benefit of the injured person or persons, or their legal representatives in case of death, and not contingent upon the legal liability of the assured," is to be deemed as having been intended at most as a pecuniary indemnity to the legal representatives of an employee for the loss sustained by them in consequence of his death. *Embler v. Hartford Steam Boiler Ins. Co.*, 158 N. Y., 431.

There is no provision of the Insurance Law, that prohibits the issuing of a life insurance policy, having an institution the beneficiary instead of a person, but if the application were made by the institution, it would fall within the prohibition of section 55. *Ruling Ins. Dept.*, Aug. 10, 1911.

CREDITOR'S LIEN.—A surrogate has no jurisdiction to enforce a creditor's lien against insurance moneys under § 22 of the Domestic Relations Law, chap. 272 of 1896; the proper course is by a representative action to establish and enforce the lien after the assets of the estate have been exhausted. *Matter of Thompson*, 184 N. Y., 36; rev'g 102 App. Div., 617.

INFANTS.—Co-operative insurance companies cannot insure the lives of infants. In *re Mut. Life Assn.*, Attorney-General Rep., 1892, page 366.

This section, providing that a minor shall not be deemed incompetent to contract for insurance, is not declaratory of the common law, but in con-

travention thereto; it is immaterial that the policy sought to be rescinded was an endowment policy, as the infant may make a valid contract in any of the common forms. *Hamm v. Prudential Insurance Co.*, 137 App. Div., 504.

If the personal contract of an infant, beneficial to himself, is fair and reasonable and free from fraud and has been wholly or partly executed on both sides and the infant has disposed of what he has received, or the benefits received by him are such that they cannot be restored as in a contract of insurance, he cannot recover back what he has paid. *Johnson v. North Western Mutual Life Ins. Co.*, 56 Minn., 365; 45 Am. St. Rep., 473.

Co-operative or assessment companies have no power to receive, as members, infants of such tender years that they are unable to exercise any choice in becoming members or to exercise the powers with which members are invested under the act. *Matter of G. M. B. Ass'n*, 135 N. Y., 280.

The general provisions of this section providing that a person liable for the support of a child of the age of one year and upward may take a yearly renewal term policy of insurance upon the life of such child, does not extend the scope of article 6 of the Insurance Law, which forbids a life insurance company, conducted upon the assessment plan, from issuing such a policy. *People v. Industrial Benefit Ass'n.*, 92 Hun, 311; *aff'd* 149 N. Y., 606.

The insuring of infants by assessment life and casualty insurance corporations doing business under the provisions of article 6 of the Insurance Law is not permitted. *Atty.-Gen. Dec.*, March 23, 1910.

The provisions of § 55 fixing the amount of insurance which may be taken on the life of a child by a person liable for its support does not alone restrict the amount of insurance by a single policy, but limits the total amount of such insurance. *Flynn v. Prudential Ins. Co.*, 207 N. Y., 315, *rev'g* 145 App. Div., 704.

As this section makes an infant over fifteen years of age competent to contract for life insurance, a person who has paid the premiums for the infant at his request can recover the amount from the infant the same as he might recover for necessities furnished. *Equitable Trust Co. v. Moss*, 149 App. Div., 615.

ASSIGNMENT OF POLICY.—A policy of insurance for the benefit of a wife upon the life of her husband is not assignable except in the cases where assignments are authorized by statute, and an assignment thereof cannot be compelled by a decree of the court, nor can the avails thereof be appropriated in advance by operation of law to the payment of debts, or subjected to the lien of creditors either of herself or her husband. *Baron v. Brummer*, 100 N. Y., 372.

The provisions of chap. 248 of 1879, providing that policies of life insurance issued "upon the lives of husbands for the benefit and use of their wives" shall be assignable by said wife, with the written consent of the husband do not require the written consent of the wife to a transfer by the husband of his interest, arising out of his option to convert the policy into cash. *Travelers' Insurance Co. v. Healey*, 25 App. Div., 53.

An assignment of a policy in a foreign life insurance company, issued upon the life of a husband, in which the wife is the beneficiary, is valid, where the assignment is made by the wife with the written consent of her husband, although the assignee has no interest in the life of the husband, and merely takes the assignment upon an agreement that he shall have an interest of two-thirds in the policy, provided he pays the premiums upon it and prevents it from lapsing. *Fuller v. Kent*, 13 App. Div., 529.

Where a person takes out a policy of insurance upon his own life, and the amount is made payable to another having no interest in the life, or where the insured assigns his policy to one having no such interest, the beneficiary or the assignee may hold or enforce the policy, if it was valid in its inception, and was procured or the assignment made in good faith. *Olmstead v. Keyes*, 85 N. Y. 593.

It is the doctrine of this state, that a policy of life insurance taken out by the insured himself or by another having an insurable interest in his life, in good faith and not for the mere purpose of assignment, may be lawfully assigned to one having no insurable interest in the life of the one insured; and that the assignee, when the assignment is general and absolute, will be entitled to the entire proceeds of the policy; the fact that the insured's condition of health has failed does not deprive him of the right to realize on his policy by its assignment. *Steinback v. Diepenbrock*, 158 N. Y., 24.

Evidence that a husband delivered a policy of insurance upon his life to his wife as a gift, and that she thereafter paid all the premiums thereon, is sufficient to warrant a jury in finding both a gift and an assignment of the policy to the wife, vesting her with the legal title thereto, although the policy contained a provision that it should not be assigned unless in writing. *Griffis v. Prudential Ins. Co.*, 43 App. Div., 499.

A policy of insurance contained a clause declaring that it could be assigned only on the written approval of the company; it did not declare that a violation of the provision would avoid the policy; in an action thereon it was held that a violation of this provision did not involve a forfeiture, and that an assignee could enforce the policy, although the insurer had not consented to the assignment. *Marcus v. St. Louis Mut. L. Ins. Co.*, 68 N. Y. 625.

Stipulation in a policy of insurance, issued upon the life of a husband for the benefit of his wife, against the assignment thereof, inserted solely for the advantage of the company, cannot avail the wife as against one to whom she has assigned the policy under the statute, where the company has declined to take advantage of the stipulations and has paid the proceeds of the policy into court. *Spencer v. Myers*, 150 N. Y., 269.

The statutes relating to life insurance issued for the benefit of a married woman, refer to a contract made by her in her own name, or in the name of a third person with his assent as her trustee, for insurance upon the life of her husband, and not to a contract made by him for her benefit. *Bradshaw v. Mutual Life Ins. Co.*, 187 N. Y., 347; *rev'g* 109 App. Div., 375.

A married woman as a beneficiary in a policy of insurance on the life of her husband is entitled to the proceeds of the policy notwithstanding a divorce obtained by her before his death. *Overhiser, Adm'x. v. Overhiser et al.*, 63 Ohio St., 77. But see § 1761, Code Civ. Proc.

§ 56. Foreign insurance companies.

Companies from other states and countries hereafter applying for admission to this state shall be possessed of at least the amount of capital required for companies organized under the laws of this state, which amount of capital of such companies must be fully paid in cash. It shall be the duty of the superintendent of the insurance department to refuse admission to any such company unless its assets are of the same general character that companies of this state are permitted to hold, nor shall any such company be admitted to transact business in this state unless it shall file in the office of the superintendent of the insurance department an agreement under its corporate seal that it will not transact in this state any business which any fire insurance companies of this state, organized under the general act, are prohibited from transacting; and any company violating the provisions of said agreement shall have its certificate of authority revoked by the said superintendent forthwith, provided the assent of the attorney-general shall be previously obtained.

Source.—L. 1881, chap. 671, as amended by L. 1892, chap. 654, § 1.

Amended by L. 1910, chap. 168.

L. 1892, chap. 654, having been passed at the same session as the Insurance Law (L. 1892, chap. 690) was in force and effect under former § 33 of the Statutory Construction Act, notwithstanding that L. 1881, chap. 671, § 2, which it purported to amend, was repealed by L. 1892, chap. 690.

§ 57. Application of article limited.

The provisions of this article shall not apply to any individual or partnership or association of underwriters known as Lloyds or as individual underwriters which, on the first day of October, eighteen hundred and ninety two, was lawfully engaged in the business of insurance within this state, and not required by law to report to the superintendent of insurance or the insurance department or subject to their supervision or examination, nor to any such association, notwithstanding any change hereafter made therein by the death, retirement or withdrawal of any such underwriters or by the admission of others to such association, except, however, that every such individual, part-

nership or association of underwriters shall, on or before the first day of February of each year, make and file with the superintendent of insurance a statement of its affairs during the year ending on the thirty-first day of December immediately preceding, which statement shall be verified by the accredited attorney of the underwriters of the association and shall be in such form and contain such matter as the superintendent of insurance shall prescribe.

No partnership or association of underwriters known as Lloyds or as individual underwriters which was lawfully engaged or was lawfully entitled to engage in the business of insurance in this state on April first, nineteen hundred and two, and which failed to file with the superintendent of insurance, on or before September first, nineteen hundred and two, a copy of its original articles of association or co-partnership agreement, together with any amendments thereto, duly verified by one of the members thereof by affidavit to the effect that it is a true copy, and stating where the principal office of such partnership or association is located, the kind of business in which it was engaged and the name under which it did business, shall be permitted to engage in or transact the business of insurance.

Source.—Former § 57, as amended by L. 1894, chap. 684; L. 1902, chap. 297; L. 1903, chap. 471; new.

Amended by L. 1909, chap. 240; L. 1910, chap. 634.

Repealed by L. 1910, chap. 638 (in effect Jan. 1, 1911.)

Note.—Section 57 was affected by two laws, chaps. 634 and 638 of 1910. The first of these chapters struck from such section the excepting clauses as to fraternals, etc., but left in the clauses as to Lloyds. This law went into effect July 1st. Hence, section 57 had reference to Lloyds; but the Lloyds bill proper — chap. 638 of 1910 — repealed section 57 in toto, such repeal, however, not going into effect until January 1, 1911. The purpose of this peculiar method of legislation was to prevent a repetition of what happened in 1892 by keeping up the bars against Lloyds until the new Lloyds article shall be put into full effect on January 1, 1911. The governor signed the life article bill on June 23d, and the Lloyds bill on the 24th. Hence, the Lloyds bill is the later of the two executive acts and thus controls.—Editor.

LLOYDS.—The Columbia Fire Lloyd's, an association organized prior to October 1, 1892, and whose existence terminated September 30, 1897, is not empowered to continue business as a "Lloyd's" association under section 57 of the Insurance Law. Attorney-General Rep., 1867, page 175. (See Art. X.)

An agent of the "American Lloyds," an association of individual fire underwriters not incorporated by the laws of this state, is not exempted from the application of section 523 of the New York City Consolidation Act by the fact that no such association was in existence when the section was framed, or by the fact that the association was authorized to do business by a subsequent law of the state. *Fire Department v. Stanton*, 159 N. Y., 225.

Lloyds, not engaged in insuring against loss by theft or burglary prior to October 1, 1892, cannot now engage in such business. *Attorney-General Rep.*, 1899, page 329.

The present Insurance Law does not apply to Lloyd companies organized before said law went into effect, October 1, 1892, although organized subsequently to the passage of said law, May 18, 1892. *Attorney-General Rep.*, 1893, page 232.

A Lloyds association actually engaged in the business of insurance on October 1, 1902, so that it was expressly exempted from the prohibition of the statute, does not forfeit its right by subsequent nonuser. *Attorney-General's Rep.*, July 21, 1909.

ACTION.—An action may be maintained under section 1948 of the Code of Civil Procedure against underwriters carrying on a Lloyds insurance. *People v. Loew*, 19 Misc., 248.

PARTIES TO ACTION.—An action upon a contract to reinsure the risks of underwriters operating under the Lloyds system, must be brought by all of them, or by those officers, if there be such, who, under section 1919 of the Code of Civil Procedure, may sue for an unincorporated association of more than seven persons; and, therefore, where less than all of the underwriters sue, their complaint is demurrable for defect of parties plaintiff. *Thompson v. Colonial Assur. Co.*, 33 Misc., 37.

ENGAGED IN BUSINESS.—The phrase, "engaged in business," as used in the Insurance Law, has reference to such associations as were actually doing business in this state, having outstanding policies and contingent liabilities, at the date when the Insurance Law took effect. *Attorney-General Rep.*, 1894, page 99.

PURPOSE.—Associations incorporated, not to engage in business under this section, but merely for purposes of sale, cannot lawfully transact the business of insurance in this state. *People v. Loew*, 23 Misc., 574.

FRATERNAL BENEFICIARY SOCIETIES.—Section 63 extends the jurisdiction of the Superintendent of Insurance to insurance corporations of every character and, by implication to authorize him to examine the affairs and question under oath the officers of any fraternal beneficiary society or town and county co-operative insurance corporation notwithstanding the previous exemption under section 57; the false swearing of any officer on such examination is perjury. *People v. Reed*, 66 Misc., 425.

§ 58. Policy to contain the entire contract; statements of insured to be representations and not warranties.

Every policy of insurance issued or delivered within the state on or after the first day of January, nineteen hundred and seven, by any life insurance corporation doing business within the state shall contain the entire contract between the parties and nothing shall be incorporated therein by reference to any constitution, by laws, rules, application or other writings unless the same are endorsed upon or attached to the policy when issued; and all statements purporting to be made by the insured shall in the absence of fraud be deemed representations and not warranties. Any waiver of the provisions of this section shall be void.

Source.—Former § 58, as added by L. 1906, chap. 326.

Section 58 of the Insurance Law will permit the indorsement upon or the attachment to a deferred annuity contract by annual premiums of additional options not conflicting with any provision of law. Ruling Ins. Dept., March 4th, 1909.

An insurer who issues a policy covering only death by accidental means is, nevertheless, engaged in the business of life insurance and is within the provisions of section 58, providing that the policy shall contain the entire contract. *Moore v. The Prudential Casualty Co.*, 170 A. D., 849.

This section applies only to policies issued on or after January 1, 1907. *Perry v. Prudential Insurance Co.*, 144 App. Div., 780.

Where a policy states that the consideration therefor is the application of the insured, which is made part of the contract and annexed to the policy, the insurer cannot set out other alleged misrepresentations as an inducing cause of the policy, for the reason that section 58 requires that every such policy shall contain the entire contract and nothing shall be incorporated therein by reference to other writings not indorsed upon or attached to the policy; so where the insurer in its answer sets out alleged misrepresentations made by the insured to its examining physician; said allegations should be stricken out where the questions of the physician and the answers were not attached to the policy. *Becker v. Colonial Life Insurance Co.*, 153 App. Div., 382.

Under § 58 of the Insurance Law, every policy of life insurance must contain the entire contract, and in an action thereon breaches of warranty in the application, which was not attached to the policy, are not available as a defense, in the absence of fraud. *Cohen v. Metropolitan Life Insurance Co.*, 85 Misc., 406.

Under § 58, which provides that every policy of life insurance issued after January 1, 1907, shall contain the entire contract, statements of the insured in his application which were neither indorsed on, nor attached to, the

policy may not be considered in an action thereon. *Murphy v. The Colonial Life Ins. Co. of America*, 83 Misc., 475.

A defense of fraudulent representations of the insured in his application as to his life, habits and other insurance cannot be sustained where the application or statements of the insured are not attached to and made part of the policy. *Mees v. Pittsburgh Life & Trust Co.*, 169 App. Div., 87.

False representations on the part of the insured in procuring the issuance of a policy are inadmissible where such representations were not endorsed upon or attached to the policy as required by this section; evidence as to a collateral agreement to the effect that the policy was not to take effect until the first premium was paid during the good health of the insured is not admissible where such agreement is not part of the policy.

The intent of this section is to require insurance companies when issuing policies to set out therein the entire contract and every statement which induced the company to enter into the agreement and upon which it relied in so doing must be annexed to and made part of the policy. *Archer v. Equitable Life Assurance Society*, 169 App. Div., 43.

§ 59. Certain provisions in policies prohibited.

No corporation issuing policies of insurance upon the lives of persons, whether such corporation is a domestic one, existing under the laws of the state, or a foreign one which has become entitled to do business within the state, shall provide in any application, policy or certificate of insurance, that the person soliciting such insurance, or any person who is engaged in the business of soliciting insurance for the company issuing such policy, or certificate, and whose compensation is either paid by said company, or is contingent upon the issuing of such policy, is the agent of the person insured under said policy or certificate, or shall insert in said policy or certificate any provision to make the acts or representations of such person binding upon the person so insured under said policy or certificate.

Source.—Former § 59, as added by L. 1905, chap. 568, and amended by L. 1906, chap. 326.

§ 60. Estimates and misrepresentations prohibited.

No life, health or casualty insurance corporation, including corporations operating on the co-operative or assessment plan doing business in this state and no officer, director or agent therefor or any other person, co-partnership or

corporation shall issue or circulate, or cause or permit to be issued or circulated, any illustration, circular or statement of any sort misrepresenting the terms of any policy issued by any such corporation or the benefits or advantages promised thereby, or any misleading estimate of the dividends or share of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. Nor shall any such corporation or agent thereof or any other person, co-partnership or corporation make any misleading representation or incomplete comparison of policies to any person insured in any such corporation for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender his said insurance. The superintendent of insurance may in his discretion revoke the certificate of authority issued to any corporation or agent on his being satisfied that such corporation or agent has violated any of the provisions of this section. Any violation of this section shall constitute a misdemeanor, and it shall be the duty of the superintendent of insurance to revoke the certificate of authority of the corporation or agent on a conviction for so offending.

Source.—Former § 60, as added by L. 1906, chap. 326, and amended by L. 1908, chap. 347.

Amended by L. 1911, chap. 533, and L. 1913, chap. 47.

Note.—Section 60 was amended by L. 1911, chap. 533, so as to prohibit the making of any misleading representation concerning, or incomplete comparisons of, life insurance policies. It was intended to penalize the practice of certain agents of furnishing incomplete comparisons of the experience of various companies, and also to make it possible to reach certain so-called adjustment bureaus which were twisting insurance in this State.—Ed.

Note.—The amendment by L. 1913, chap. 47, included health, casualty and co-operative companies within the provisions of the section.—Ed.

Note.—The purpose of the amendment of this section by chapter 47 of 1913 was to extend the law in regard to misrepresentation and estimates so as to include health and casualty insurance companies, and co-operative or assessment associations.—Ed.

A writ of prohibition does not lie to restrain the Superintendent of Insurance from proceeding with the hearing of one charged with a violation of § 60; such a proceeding by the Superintendent is judicial in its nature and subject to review. *People ex rel. Burr v. Kelsey*, 129 App. Div., 399.

The prohibition in this section applies to false estimates only, "misrepresentations;" so held in relation to so-called partnership proposition of North-Western Mutual Life Insurance Co. *Ruling Ins. Dept.*, Oct. 31, 1910.

§ 61. Receivers to make assessment on premium notes.

In case the corporation, in regard to which a receiver has been or shall hereafter be appointed, is or shall be a mutual insurance company, such receiver shall have full power under the authority and sanction of the court appointing him, to make all such assessments on the premium notes belonging to such corporation as may be necessary to pay the debts of such corporation, as by the charter thereof the directors of such corporation have authority to make; and the notice of such assessment may be given in the same manner as is provided in the charter of said company for the directors of said company to give; and the said receiver shall have like rights and remedies, upon and in consequence of the non-payment of such assessments, as are given to the corporation or the directors thereof by the charter of such corporation.

Source.—L. 1852, chap. 71, § 2.

§ 62. Surrender of policies to receiver.

Such receiver is authorized to receive a voluntary surrender of all policies issued by such corporation, or to cancel the policies issued by such corporation, in all cases where by the charter of such corporation, the directors thereof are authorized to receive the surrender of, or cancel the policies issued by such corporation.

Source.—L. 1852, chap. 71, § 3.

§ 63. Proceedings against and liquidation of delinquent insurance corporations.

This section shall apply to all corporations, associations, societies and orders to which any article of this chapter is applicable, and to all corporations, associations, societies and orders which are subject to examination under any section of this chapter, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in process of organization intending to do such business therein, anything as to any such corporations, associations, societies or orders provided in this article to the contrary notwithstanding; and the words "corporation" or "corporations" herein shall also include all such associations, societies and orders as well as all voluntary or unincorporated associations.

1. Whenever any domestic corporation (a) is insolvent; or (b) has refused to submit its books, papers, accounts or affairs to the reasonable inspection of the superintendent, or his deputy or ex-

aminer; or (c) has neglected or refused to observe an order of the superintendent to make good within the time prescribed by law any deficiency, whenever its capital, if it be a stock corporation, or its reserve, if it be a mutual corporation, shall have become impaired; or (d) has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other corporation, association, society or order, without having first obtained the written approval of the superintendent; or (e) is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public; or (f) has wilfully violated its charter or any law of the state; or (g) whenever any officer thereof has refused to be examined under oath touching its affairs; or (h), if such corporation be organized under article six, seven or eight of this chapter, its condition is found, after examination, to be such that it could not meet the requirements for incorporation and authorization specified in such articles respectively—the superintendent may, the attorney-general representing him, apply to the supreme court or any justice thereof in the judicial district in which the principal office of such corporation is located for an order directing such corporation to show cause why the superintendent should not take possession of its property and conduct its business, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders or the public may require.

2. On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such corporation from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct such superintendent, or his successor in office, forthwith to take possession of the property and conduct the business of such corporation, and retain such possession and conduct such business until, on the application either of the superintendent, the attorney general representing him, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the superintendent to take possession has been removed and that the corporation can properly resume possession of its property and the conduct of its business.

3. If, on a like application and order to show cause, and after a full hearing, the court shall order the liquidation of the business of such corporation, such liquidation shall be made by and under the direction of such superintendent, and his successors in office, who may deal with the property and business of such corporation in their own names as superintendents or in the name of the corporation, as the court may direct, and shall be vested by operation of law with title to all of the property, contracts and rights of action of such corporation as of the date of the order so directing them to liquidate. The filing or recording of such order in any record office of the state shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such corporation would have imparted. The rights and liabilities of any such corporation, and of its creditors, policyholders, stockholders and members, and of all other persons interested in its assets, shall, unless otherwise directed by the court, be fixed as of the date of the entry of the order directing the liquidation of such corporation in the office of the clerk of the county wherein such corporation had its principal office for the transaction of business upon the date of the institution of proceedings under this section.

4. Whenever any of the grounds of jurisdiction over domestic corporations specified in subdivisions (a), (b), (c), (d), (e), (f) and (g) of subsection one of this section exist or arise with reference to any corporation incorporated by or existing under the government or laws of any country outside of the United States and authorized to transact the business of insurance and having assets in this state; or whenever any foreign corporation so authorized and having assets in this state has been placed in the hands of a receiver or had its property sequestered in its domiciliary state or country or in any other state or country, the superintendent may, the attorney-general representing him, apply to the supreme court or any justice thereof in the judicial district in which such corporation has its principal office for the transaction of business in this state, for an order directing such corporation to show cause why the superintendent should not take possession of its property and conserve its assets for the benefit of its creditors, and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders or the public may require.

5. On such application, or at any time thereafter, such court may, in its discretion, issue an injunction restraining such corporation and its officers, agents and employees from the transaction of its business or disposition of its property until the further order of the court. On the return of such order to show cause, and after a full hearing, the court shall either deny the application or direct the superintendent forthwith to take possession of the property and conserve the assets of such corporation, and retain such possession until, on the application either of the superintendent, the attorney-general representing him, or of such corporation, it shall, after a like hearing, appear to the court that the ground for such order directing the superintendent to take possession has been removed and that the corporation can properly resume possession of its property and conduct its business. If, on such application, the court shall direct the superintendent to take possession of the property and conserve the assets of such corporation, the rights and duties of the said superintendent with reference to such corporation and its said assets shall be those heretofore exercised by and imposed upon ancillary receivers of foreign corporations in this state.

6. For the purposes of this section, the superintendent shall have power to appoint, under his hand and official seal, one or more special deputy superintendents of insurance, as his agent or agents, and to employ such counsel, clerks and assistants as may by him be deemed necessary, and give each of such persons such powers to assist him as he may consider wise. The compensation of such special deputy superintendents, counsel, clerks and assistants, and all expenses of taking possession of and conducting the business of liquidating any such corporation shall be fixed by the superintendent, subject to the approval of the court, and shall, on certificate of the superintendent, be paid out of the funds or assets of such corporation. During the progress of any proceedings taken under this section, the superintendent, his deputies or any examiner authorized by him and the special deputy superintendent of insurance acting for the said superintendent therein shall have all of the powers given to the superintendent, his deputy or any examiner authorized by him, by section thirty-nine of this chapter, including the power to examine under oath the persons specified in such section, and to compel the production of books and papers as therein provided.

7. For the purposes of this section, the superintendent shall have power, subject to the approval of the court, to make and prescribe such rules and regulations as to him shall seem proper.

8. The superintendent shall transmit to the legislature, in his annual report, the names of the corporations so taken possession of, whether the same have resumed business or have been liquidated, and such other facts as shall acquaint the policyholders, creditors, stockholders and the public with his proceedings under this section; and, to that end, the special deputy superintendent in charge of any such corporation shall file annually with the superintendent a report of the affairs of such corporation.

9. All acts of the superintendent of insurance in taking or continuing in possession of any property, or in the regulation, conduct or liquidation of the business, of any corporation to which this section is applicable, since the first day of January, nineteen hundred and nine, whether such taking possession, continuing in possession, regulation, conduct or liquidation was in pursuance of a contract, by mutual consent or otherwise, are hereby ratified, legalized and confirmed.

10. At any time after the court shall order the liquidation of the business of any such corporation, as provided in paragraph numbered three of this section, the superintendent of insurance may apply for the dissolution of such corporation, and the same, after due notice and hearing and such other procedure as to the court shall seem proper, shall be dissolved.

11. The order to show cause and the papers upon which the same is made in any proceeding instituted under the provisions of this section shall be served upon the corporation named in such order in the manner prescribed for personal service of summons upon a domestic corporation by section four hundred and thirty-one of the code of civil procedure. When it is satisfactorily proved by affidavit that the officers of the corporation named in the said order to show cause, upon whom service is required to be made as above provided, or, if a Lloyds association be named in the order to show cause, the duly designated attorney-in-fact, have departed from the state or keep themselves concealed therein with intent to avoid service, such order to show cause may provide for service thereof in such manner as the court or justice by whom the same is made, shall direct.

12. At any time after the commencement of proceedings under an order of liquidation made pursuant to this section, the said superintendent may remove the principal office of the corporation in liquidation to the county of Albany. In event of such removal the court shall, upon the application of the superintendent, direct the clerk of the county wherein such proceeding was commenced to transmit all of the papers filed therein with such clerk to the clerk of the county of Albany, and the proceeding shall thereafter be conducted in the same manner as though it had been commenced in the county of Albany.

Source.—Added by L. 1909, chap. 300.

Amended by L. 1910, chap. 634; L. 1911, chap. 366; L. 1912, chap. 217, and L. 1913, chap. 29.

Note.—The purpose of the amendment of this section by chapter 29 of 1913 was to permit the transfer of all liquidation proceedings brought by the Superintendent of Insurance to the county of Albany.—Ed.

The jurisdiction of the superintendent of insurance is extended over all fraternal beneficiary societies and town and county co-operative insurance corporations to examine their affairs and question their officers under oath, by section 63 of the Insurance Law. *People v. Reed*, 66 Misc., 425.

§ 63 of the Insurance Law, contemplates that the determination, as to the creditors of an insolvent company and the proportionate share of the assets to which each is entitled, to be determined by some uniform standard, shall be made as of the date of the entry of the order of liquidation, unless the court, at the time the order is made, shall otherwise direct by specifying some other date upon which this determination shall be made. By virtue of this provision, such date can be fixed only at the time of the entry of the order of liquidation and must apply equally to all who have claims against the insolvent estate. Three classes of claims against a surety company considered and held that they had so far ripened and matured as to entitle claimants to share in the distribution of the assets in the hands of the Superintendent. *Matter of Empire State Surety Company*, 214 N. Y., 533, aff'g 165 A. D., 135.

It seems that subdivision 3 of § 63 of the Insurance Law, providing in relation to the date of the entry of the order directing the liquidation of a corporation, confers upon the court discretion to grant claimants, for damages for accidents which happened prior to the date of adjudication, and which had not been actually satisfied by the assured prior to such date, an opportunity to perfect their claims into debts before excluding them from participation in the assets of the company. The word "liabilities" as used in the statute, should not be construed to mean "debts." *Matter of Empire State Surety Company*, 165 A. D., 135; aff'd 214 N. Y., 553.

The language of section 63 is sufficiently broad to include in its scope town or county co-operative companies organized under article IX. *Attorney-General Rep.*, July 20, 1909.

The Supreme Court, in a proceeding directing the Superintendent of Insurance to take possession of the property and liquidate the business of a surety company under § 63 may grant an order restricting creditors of the surety company from taking proceedings for the purpose of recovering their claims, and where such a restraining order is served upon a creditor and he files his claim with the Superintendent of Insurance, the Supreme Court acquires jurisdiction and may punish him for contempt. *Matter of Empire State Surety Co.*, 164 App. Div., 586.

Lloyds associations known as Lloyds or individual underwriters are included within the broad scope of section 63, and materially extends the authority of the Superintendent of Insurance over such companies, since application may be made to the court, where such associations "have refused to submit books" or "an officer thereof has refused to be examined," for an order to show cause why the superintendent should not take possession of its property; such application may also be made where an association has willfully violated any law of the state. *Attorney-General's Rep.*, June 15, 1909.

§ 64. Provisions of insurance law not to apply to religious orders.

None of the provisions of this chapter shall apply to any corporation, organized under the laws of any state or territory of the United States solely for the purpose of providing for the support or relief of the priests, clergy or ministers of any religious denomination, or for the support or relief of those dependent on them.

Source.—Added by L. 1910, chap. 615.

§ 65. Rebating and discriminations prohibited.

No insurance corporation, association, partnership, Lloyds or individual underwriters authorized or permitted to do any insurance business within this state, or any officer, agent, solicitor or representative thereof, shall make any contract for such insurance, on property or risk located within this state, or against liability, casualty, accident or hazard that may arise or occur therein or agreement as to such contract, other than as plainly expressed in the policy issued or to be issued thereon; nor shall any such corporation, association, partnership, Lloyds or individual underwriters, or officer, agent, solicitor or representative thereof, directly or indirectly, in any manner whatsoever, pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy or any special favor or advantage in the dividends or other benefit to

accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy or contract of insurance, or give, sell or purchase, or offer to give, sell or purchase, as inducement to such insurance, or in connection therewith, any stock, bonds or other securities of any insurance company, or other corporation or association, or any dividends or profits accrued thereon, or anything of value whatsoever, not specified in the policy, nor shall any insurance broker, his agent or representative, or any other person, directly or indirectly, either by sharing commissions or in any manner whatsoever pay or allow or offer to pay or allow as inducement to such insurance, or after the insurance shall have been effected, any rebate from the premium which is specified in the policy; nor shall the insured, his agent or representative, directly or indirectly accept or knowingly receive any such rebate from the premium specified in the policy; this section shall not prevent any corporation, person, partnership or association lawfully doing such insurance business in this state from the distribution of surplus and dividends to policyholders after the first year of insurance nor prevent any member of an inter-insurance or Lloyds association from receiving the profit of his or its underwriting; nor shall this section prevent any such corporation or other insurer, or his or its agent, from paying commissions to the broker who shall have negotiated for the insurance, nor shall this section prevent any licensed broker from sharing or dividing a commission earned or received by him with any other licensed broker or brokers who shall have aided him in respect to the insurance for the negotiation of which such commission shall have been earned or paid, and nothing herein contained shall be held to prevent the covering of risks by temporary binders or such other memoranda as do not conflict with the provisions of this chapter. Nor shall this section prevent any such corporation or other insurer, or any agent or insurance broker, from distributing or presenting to any person or corporation any article of merchandise not exceeding one dollar in value, which shall have conspicuously stamped or printed thereon the advertisement of such insurance corporation, agent or broker.

No person shall be excused from attending and, when ordered so to do, from testifying or producing any books, papers or other

documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may have been required so to testify or to produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. Any person or corporation violating the provisions of this section shall be guilty of a misdemeanor and shall forfeit to the people of the state the sum of five hundred dollars for each such violation. This section shall not apply to any contract of life insurance nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts made by persons, associations or corporations authorized to do business under articles five, seven and nine of this chapter.

Added by L. 1911, chap. 416.

Amended by L. 1912, chap. 225, and L. 1913, chap. 25.

Note.—The purpose of the amendment of this section by chapter 25 of 1913 was to bring Assessment Insurance Associations within the prohibition against rebates and discrimination.—Ed.

Commissions paid by the Fidelity and Casualty Company of New York city to the New York State Bankers' Association on insurance placed by its members with the company amount to rebates and discriminations as defined in the Insurance Law although the funds over are used for association purposes. Attorney-General Rep., 1912, page 535.

§ 66. Promotion of insurance corporations; sale of securities.

1. As the terms are used in this section "promoting corporation" means a corporation or joint stock association, engaged in the business of organizing or promoting or endeavoring to organize or promote the organization of an insurance corporation or corporations, or in any way assisting therein; "holding corporation" means a corporation or joint stock association, which holds or is engaged in the acquisition of the capital stock or a major portion thereof of one or more insurance corporations for

the purpose of controlling the management thereof, as voting trustees or otherwise; and "securities" means the shares of capital stock, subscription certificates, debenture bonds and any and all other contracts or evidences of ownership of or interest in insurance corporations, or in promoting or holding corporations as defined in this section.

2. No individual, partnership, association or corporation, as the agent of another or as broker, shall sell or offer for sale or in any way assist in the sale in this state of the securities of any promoting or holding corporations, as defined in this section, or of any insurance corporation which is not at the time of such sale or offer for sale, lawfully engaged or authorized to engage in the transaction of the business of insurance in this state, without first procuring, as hereinafter provided, a certificate of authority from the insurance department to sell such securities; nor shall any individual, partnership, association or corporation sell or offer for sale in this state the securities of any promoting or holding corporation as defined in this section, or of any insurance corporation which is not at the time of such sale or offer for sale, lawfully engaged or authorized to engage in the transaction of the business of insurance in this state, unless such corporation shall have first procured from the superintendent of insurance, as hereinafter provided, a certificate that said corporation has fully complied with the provisions of this section and is authorized to sell such securities. Every certificate issued by the superintendent of insurance pursuant to the provisions of this section shall state in bold type that the superintendent in no way recommends the securities thereby authorized to be sold, and shall be renewable annually, upon written application, filed on or before the first day of January of each year, and may be revoked for cause at any time by such superintendent. The superintendent shall prepare and furnish upon request suitable blank forms of application for the certificates required by this section.

3. Every individual, copartnership, association or corporation who or which desires or intends to sell or to offer for sale in this state, the securities of any insurance corporation or of any promoting or holding corporation as defined in this section, shall file with the superintendent of insurance an application for a certificate of such authority. Such application shall contain a statement, verified by oath, setting forth the name and address of the

applicant, previous business experience, date and place of birth or organization, and such other and further information as the said superintendent may require. It shall be the duty of the superintendent of insurance to examine the application so filed, and to make any further inquiry or examination of any such applicant as he may deem advisable. If upon such examination the superintendent shall find that the applicant, or applicants, or if a corporation, the officers and directors thereof, is or are all trustworthy persons of good business credit, the superintendent may issue to such applicant a certificate of authority to sell or offer for sale in this state, the securities of any insurance corporation or corporations and of any promoting or holding corporation previously authorized under this section which shall be mentioned therein.

4. Every such unauthorized insurance corporation, and every promoting or holding corporation, as defined in this section, whose securities are to be offered for sale in this state, shall file with the superintendent of insurance copies of all securities to be offered for sale, and an application for a certificate of authority under this section which shall contain a statement in detail of the plans and purposes of such corporation, the amount and par value of the securities to be offered for sale and the selling price thereof, the manner in which the moneys paid in therefor are to be spent or employed, the rate of commissions to be paid for the sale of such securities, the salaries to be paid to the officers of such corporation, and such other and further information as the said superintendent may require. No change shall thereafter be made in the form or character of the securities to be offered for sale, or in the plans or purposes of any such corporation without the approval thereof in writing by the said superintendent. It shall be the duty of the superintendent of insurance to examine the application and other documents so filed, and to make any further inquiry or examination of any such corporation as he may deem advisable. If upon such examination the superintendent shall find that the plans and purposes of such corporation are proper, that its condition is satisfactory, that the amount of its securities is reasonable, that the price at which such securities are to be sold is adequate, and that the manner in which the moneys paid in therefor, the rate of commissions to be paid and the salaries of officers are fair, the superintendent may issue a

certificate that such corporation has complied with all the provisions of this section and is authorized to sell or offer its securities for sale in this state.

5. The superintendent of insurance may refuse to issue or renew any certificate provided for by this section, if, in his judgment, such refusal will best promote the interest of the people of the state. No individual whose certificate of authority granted under this section is revoked, nor any copartnership of which he is a member, nor any corporation of which he is an officer or director, shall be entitled to any certificate of authority under this section for a period of five years after such revocation; and if any such certificate held by a copartnership or corporation is so revoked, no member of such copartnership or officer or director of such corporation shall be entitled to any such certificate for the same period of time.

6. No printed matter shall be used in connection with the sale of securities of any such promoting, holding or insurance corporation, for advertising purposes, or in the dissemination of information with reference thereto, unless such printed matter shall first be submitted to the superintendent of insurance and approved by him in writing. No such corporation and no officer, director or agent thereof, or any other person, copartnership, association or corporation shall issue, circulate or employ or cause or permit to be used, issued, circulated or employed any circular or statement, whether printed or oral, of any sort, misrepresenting or exaggerating the earnings of insurance corporations or the value of their corporate stock, or other securities or the profits to be derived either directly or indirectly from the organization and management of insurance corporations or of organizing or holding corporations as defined in this section. No insurance or other corporation, and no individual, copartnership or association, transacting business in this state shall place or offer to place insurance in any corporation in connection with the sale or purchase of the securities of any insurance corporation or of any promoting or holding corporation as defined in this section.

Added by L. 1913, chap. 52.

Note.—The purpose of the addition of this section by chapter 52 of 1913 was to bring all promotions of insurance corporations under the immediate supervision of the Insurance Department.—Ed.

§ 67. Approval of premium rates.

Every insurance corporation or association, except the state insurance fund as administered by the state workmen's compensation commission, authorized to transact business in this state, which insures employers against liability for compensation under the workmen's compensation law, shall file with the superintendent of insurance its classification of risks and premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with basis rates and schedules, if a system of schedule rating be in use, none of which shall take effect until the superintendent of insurance shall have approved the same as adequate for the risks to which they respectively apply. The superintendent of insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association if, in his judgment, such premium rate or schedule is inadequate to provide the necessary reserves.

Added by L. 1914, chap. 16. In effect March 4, 1914.

ARTICLE II.

LIFE, HEALTH AND CASUALTY INSURANCE CORPORATIONS.

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SECTION 102. Companies issuing participating policies not to do a non-participating business.

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108. Discriminations under accident or health policies prohibited.

SECTION 70. Incorporation.

Thirteen or more persons may become a corporation for the purpose of making any of the following kinds of insurance:

1. Upon the lives or the health of persons and every insurance appertaining thereto, and to grant, purchase or dispose of annuities.

2. Against injury, disablement or death resulting from traveling or general accident, and against disablement resulting from sickness, and every insurance appertaining thereto.

3. Insuring any one (a) against loss or damage resulting from accident to or injury suffered by an employee or other person, and for which the person insured is liable, and, (b) against loss or damage to property caused by horses or by any vehicle drawn by animal power, and for which loss or damage the person insured is liable.

4. Guaranteeing the fidelity of persons holding places of public or private trust. Guaranteeing the performance of contracts other than insurance policies; guaranteeing the performance of insurance contracts where surety bonds are accepted by states or municipalities; executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed; and indemnifying banks, bankers, brokers, financial or moneyed associations, or financial or moneyed corporations, against the loss of any bills of exchange, notes, drafts, acceptances of drafts, bonds, securities, evidences of debt, deeds, mortgages, documents, currency and money, except that no such contract or indemnity indemnifying banks, bankers, brokers, financial or moneyed associations, or financial or moneyed corporations, shall indemnify against loss caused by marine risks, or risks of transportation or navigation.

4-a. Guaranteeing and indemnifying merchants, traders and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them; and corporations authorized to do such last named business in this subdivision mentioned shall have all the powers conferred by section one hundred and seventy-eight of this chapter.

5. Against loss by burglary, theft or forgery or any one or more of such hazards.

6. Upon glass against breakage.

7. Upon steam boilers and pipes, fly-wheels, engines and machinery connected therewith or operated thereby, against explosion and accident and against loss or damage to life or property resulting therefrom, and against loss of use and occupancy caused thereby, and to make inspection of and to issue certificates of inspection upon such boilers, pipes, fly-wheels, engines and machinery.

8. Upon the lives of horses, cattle and other live stock or against loss by the theft of any of such property or both.

9. Against loss or damage to automobiles (except loss or damage by fire, or while being transported in any conveyance by land or water), including loss by legal liability for damage to property resulting from the maintenance and use of automobiles.

10. Against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and of water pipes, and against accidental injury to such sprinklers, pumps or other apparatus, and against damage from loss of use or occupancy of premises by reason of such breakage or leakage.

11. Against loss or damage to elevators or other property, excepting loss or damage by fire, caused by the maintenance, operation or use of elevators, and including loss by legal liability for damage to property resulting from such operation, maintenance or use of elevators; by making and filing in the office of the superintendent of insurance a certificate signed by each of them, stating their intention to form a corporation for the purpose or purposes named in some one of the foregoing subdivisions specifying the subdivisions; and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation, the place where it is to be located, the kind of insurance

to be undertaken, and under which of the foregoing subdivisions it is authorized, the mode and manner in which its corporate powers are to be exercised, the manner of electing its directors and officers, a majority of whom shall be citizens and residents of this state, the time of such elections, the manner of filling vacancies, the amount of its capital, if any, and such other particulars as may be necessary to explain and make manifest the objects and purposes of the corporation.

Such certificate shall be proved or acknowledged and recorded in a book to be kept for that purpose, and a certified copy thereof delivered to the persons executing the same. A mutual company, without capital stock, may be organized for the purposes either separately or taken together, specified in the first and second subdivisions of this section. Except as above provided, no such corporation shall be formed under this article for the purpose of undertaking any other kind of insurance than that specified in some one of the foregoing subdivisions, or more kinds of insurance than are specified in a single subdivision; but a corporation other than a mutual corporation may be formed for all the purposes combined, or any two or more of them, specified in the first and second subdivision and clause (a) of the third subdivision, or for all the purposes combined, or any two or more of them specified in the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth and eleventh subdivisions; provided, however, that policies under subdivision nine shall be issued only by companies authorized to issue policies under subdivisions two, three or five. No corporation or association shall transact, in connection with any other kind of insurance mentioned in the foregoing subdivisions, the business of guaranteeing and indemnifying merchants, traders and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers and those dealing with them, except such corporation or association as was authorized to transact such business before June first, nineteen hundred and five; but such corporation or association may continue to transact such business with all the powers and privileges theretofore possessed or enjoyed by it. No one policy issued

by any one corporation shall embrace more kinds of insurance than are specified in one of such subdivisions, except that a policy may embrace risks specified in subdivisions one and two, and in subdivision two and clause (a) of subdivision three, and also that companies electing to issue policies under subdivision nine may embrace in one policy risks under subdivision two, clause (a) of subdivision three, and subdivisions five and nine, or either of them, and also that companies electing to issue policies on residences and private apartments may embrace in one policy risks under subdivisions three, five, six, seven, ten and eleven of this section, or any or either of them.

Source.—Former § 70, as amended by L. 1895, chap. 917; L. 1899, chap. 693; L. 1901, chap. 634; L. 1905, chap. 573; L. 1906, chap. 326; L. 1907, chap. 206; originally revised from L. 1853, chap. 463, § 1, as amended by L. 1889, chap. 338, and §§ 2, 3, as amended by L. 1879, chap. 485; L. 1869, chap. 634.

Amended by L. 1909, chap. 302; L. 1910, chap. 637; L. 1911, chap. 324; L. 1912, chaps. 231 and 232; L. 1913, chap. 304, L. 1914, chap. 204; and L. 1915, chap. 505. In effect May 3, 1915.

Note.—The primary purpose of the amendment of this section by L. 1915, chap. 505 (indemnifying banks, bankers, etc.), was to give to authorized companies operating in the State the right to do a class of business which is now carried on almost exclusively by London Lloyds.—Ed.

NOTE.—The purpose of the amendment of this section by chapter 204 of 1914, was to provide for the incorporation of companies to insure against loss or damage to elevators or other property, excepting loss or damage by fire, caused by the maintenance, operation or use of elevators, and to include loss by legal liability for damage to property resulting from such operation; and against damage from loss of use or occupancy of premises by reason of the breakage or leakage of sprinklers, pumps or water pipes; and to provide that companies electing to issue policies on residences and private apartments may embrace in one policy risks under subdivisions three, five, six, seven, ten and eleven of section seventy, or any or either of them.

Note.—The purpose of the amendment of this section by chapter 304 of 1913 was to clarify the language in relation to surety bonds; subdividing the previous provision relating to credit bonds by making it a new subdivision—4-a; in subdivision 5 to give additional power of insuring against forgery and in subdivision 8 to correct error of last year's legislation in relation to livestock companies.

Note.—Subd. 8 of this section was amended by chap. 231 of 1912 by adding the words "or against loss by the theft of any such property, or both." The section was amended by chap. 232 of 1912 which amended the last paragraph by adding "in subdivisions one and two, and" but which left subd. 8 as it was before passage of chap. 231 of 1912. The amendment of 1913 clarifies this situation brought about as above.—Ed.

See § 10, ante. Number of directors.

See § 71, post. Deposit must be made with superintendent of insurance before any business is done.

See § 4, General Corporation Law, chap. 28 of 1909. Qualifications of incorporators.

See chap. 733 of 1900. Reincorporation of foreign moneyed corporations in this state.

NATURE OF LIFE INSURANCE.—Life insurance is not regarded as a contract of indemnity merely; policies are governed by the same principles applicable to other agreements involving pecuniary obligations. *St. John v. Am. Mut. L. Ins. Co.*, 13 N. Y., 39.

The relations between a life insurance company and its policyholders are those of contractors, the contract being the policy, by which the liabilities of the company are to be determined. *Hencken v. United States Life Ins. Co.*, 11 Daly, 289; *aff'd* 98 N. Y., 627.

No trust is created between the stockholders and the insurance company or its directors. *Bewley v. Equitable Life Assur. Soc.*, 61 How. Pr., 344.

The business of physicians' liability insurance is authorized by the laws of this state, provided that no insurance can be written against liability for criminal acts. Attorney-General Rep., 1906, page 552.

CONSTRUCTION OF POLICY.—An insurance policy is to be construed like other contracts with the view to arrive at the intent of the parties; the rule that an insurance policy shall be construed most strongly against the insurer, can be resorted to only when, after using such helps as are proper to arrive at the intent of the parties, some of the language used, or some phrase inserted in the policy, is of doubtful import, in which case the rule should be applied because the insurer wrote the policy. *Foot v. Aetna Life Ins. Co.*, 61 N. Y., 575.

NAME.—A life insurance company is not prohibited from adopting a name formerly used by a fire insurance company. *Commercial Union Assur. Co. v. Smith*, 2 N. Y. Supp., 296; 18 St. Rep., 151.

CHARTER.—The charter of a proposed insurance company should state specifically the casualty against which insurance is contemplated, else the superintendent of insurance is justified in refusing his certificate thereto. Attorney-General Rep., 1894, page 357.

A certificate of incorporation must set forth the time when the directors and officers of a company are to be elected; a statement in the charter of such proposed corporation that the annual meeting of the stockholders shall be held on a date in January to be fixed by the by-laws is not sufficient. Attorney-General Rep., May 26, 1911.

UNAUTHORIZED CORPORATIONS.—Nothing can lawfully become the subject of casualty insurance unless specified in one of the subdivisions of section 70 of the Insurance Law. Attorney-General Rep., 1893, page 89.

Insurance against loss from imperfect sanitary conditions is not within the purview of the Insurance Law. Attorney-General Rep., 1893, page 335.

A corporation, organized for the purpose of guaranteeing payment of losses under insurance policies, cannot do business under the Insurance Law. It seems that such corporations are prohibited from operating under the Business Corporation Law. Attorney-General Rep., 1894, page 65.

A corporation should not be invested with the power of doing both savings, loan and insurance business. In re United Security Life Insurance and Trust Company, Attorney-General Rep., 1896, page 153.

An insurance company and a savings and loan company cannot issue a joint certificate to a proposed policyholder. Attorney-General Rep., 1893, page 259.

A company organized to provide medical attendance, in case of sickness to one for a premium paid, and to furnish a coffin in case of death, cannot do business under the provisions of the Business Corporation Law, but may under the Insurance Law. In re U. & M. Supply Co., Attorney-General Rep., 1896, page 217.

An insurance company cannot be incorporated to carry on the business specified in subdivision 4 of section 70 of the Insurance Law, in addition to the business specified in article V. Attorney-General Rep., 1897, page 230.

The kind of insurance under section 170, subd. 2, and section 70, subd. 4, differs in several material particulars and companies cannot be organized in this State for the purpose of combining the same, and while the superintendent is not required to interpret the law in other states, he should not sanction additional kind of insurance from that already permitted to a company in this State. Attorney-General Rep., Mar. 12, 1897, Aug. 3, 1897.

SURETY COMPANIES.—Surety companies have a legal right to insure the payment of deposits in banks. Attorney-General Rep., 1893, page 266.

A corporation organized under section 70, subdivision 4, may insure entire risks of a foreign surety company. Attorney-General Rep., 1896, page 145.

FOREIGN COMPANY.—An insurance company of a sister state doing business here under a special statute applicable thereto has no greater rights than those conferred by the statute in question. Attorney-General Rep., 1892, page 392.

A foreign casualty insurance company may be authorized to transact four kinds of casualty insurance business in this state on deposit of \$250,000, although its charter authorizes it to do all kinds of casualty insurance. Attorney-General Rep., 1893, page 249.

DEPOSIT.—An insurance company, organized under the laws of another state of the United States, for the transaction of business specified in section 70 of the Insurance Law, must make the same deposit of securities that is required from a domestic company. Attorney-General Rep., 1897, page 169.

A foreign company must deposit in home state \$100,000 for each kind of insurance which it is organized to transact under § 70, or \$250,000 if for three or more kinds. In re General I. Co., Attorney-General Rep., Jan. 8, 1906.

The superintendent of insurance may return to the depositors the securities which were deposited as a condition precedent to insurance business where the corporation determined not to start in business and there were no liabilities against said corporation. In re People's Life Insurance Company, Attorney-General Rep., 1896, page 133.

REINSURANCE.—An insurance company is not entitled to a deduction on account of reinsurance made by it in Lloyds which is not amenable and has not paid the tax provided for by section 34. In re Standard Marine Insurance Company, Attorney-General Rep., 1896, page 151.

DECLARATION.—In a declaration presented to the superintendent of insurance by persons applying for incorporation as a casualty insurance company, the business proposed to be carried on was stated, among other things, to be "the inspection and certification as to the sanitary conditions

of buildings and premises." In pursuance of the requirements of the Insurance Law, under section 70, the superintendent submitted the declaration and charter to the attorney-general for certification. That officer refused to certify. In proceedings by mandamus to compel the certification, held, that the business so stated in the declaration was not insurance in any legal sense, but an entirely different kind of business not within the purview of the Insurance Law, and so the declaration was not entitled to be filed in the office of the superintendent, and the attorney-general properly refused to attach his certificate of approval thereto. *People ex rel. Woodward v. Rosendale*, 142 N. Y., 126; *aff'd* 76 Hun, 103.

BONDS.—A domestic insurance corporation organized under subdivision 4 of section 70 of the Insurance Law, can issue bonds and undertakings for bail in proceedings of a criminal nature. Attorney-General Rep., 1901, page 257.

QUORUM.—A quorum of directors must be a majority of all the directors unless otherwise provided in charter or other law; by-laws cannot change this rule. Boards of directors of insurance companies are subject to the provisions of section 34 of the General Corporation Law. *Matter of New Amsterdam Casualty Company*, Attorney-General Rep., 1900, page 253.

GLASS BREAKAGE.—A company may not extend its liability upon glass against breakage under subdivision 6 to include property injured by such breakage. Attorney-General Rep., Oct. 15, 1903.

A business corporation engaged in replacing broken glass, although no money indemnity is promised in the contract, is doing an insurance business. Attorney-General Rep., 1914. Page 86.

INSURING PROPERTY OF ANOTHER.—Insurance companies cannot insure a person against loss or damage resulting from accident to the property as well as to the person of another for which the person insured is liable. Attorney-General's Rep., July 9, 1909.

BENEFICIARY.—The beneficiary under a policy issued by a casualty company, doing business under article 2 of the Insurance Law, and which contains no provision permitting the insured to change the beneficiary named, has a vested interest in the policy and not a mere expectancy or inchoate right. *Dunn v. Amsterdam Casualty Co.*, 67 Misc., 109.

CONTINUOUS POLICY.—In a "continuous policy" of accident insurance a clause providing against the payment of benefits "for illness or death occurring before the policy has been in force two months" applies only to the first two months following the issuance of the policy. *Turner v. New York Safety Reserve Fund*, 158 App. Div., 835.

§ 71. Completion of organization.

Upon receipt of the certified copy of the certificate of incorporation from the superintendent, the persons signing such certificate shall publish notice of their intention to form such corporation in a paper designated by the superintendent for six successive weeks, upon expiration of which time they may open books to receive subscriptions if a stock corporation, to the capital stock,

or if a mutual corporation, for life insurance, and keep them open until the whole of such stock or the minimum amount of life insurance has been subscribed for and collect such subscriptions to the capital stock or the annual premiums payable upon such insurance; and may invest such capital or moneys in the manner prescribed in this chapter.

No such corporation shall transact any business of insurance until, if a stock corporation, the capital has been fully paid in in cash, or, if a mutual corporation, at least five hundred persons have subscribed in the aggregate for at least one million dollars of insurance upon their lives and shall each have paid in one full annual premium in cash upon the insurance subscribed for, nor in either case until it shall have deposited with the superintendent of insurance one hundred thousand dollars in the securities required by law. If organized for purposes mentioned in two or more of the subdivisions of section seventy, it shall deposit with the superintendent the same amount in securities in the aggregate not exceeding two hundred and fifty thousand dollars, as if corporations had been separately formed for such purposes.

The securities deposited pursuant to this section shall be held by the superintendent in trust for the benefit and protection of and as security for the policy holders of the corporation.

A mutual corporation may borrow or assume liability for the repayment of a sum of money sufficient to defray the reasonable expenses of its organization and to provide the amount to be deposited with the superintendent as aforesaid upon an agreement that the same with interest at a rate not exceeding eight per centum per annum shall be repaid only in the event that after such repayment with interest the corporation shall be left possessed of sufficient assets to meet all its liabilities and to maintain a full legal reserve against its policies and not until said reserve shall be equal to at least one hundred thousand dollars; and such agreement shall provide that the corporation shall have the option to make such repayment whenever it shall be able to do so in accordance with the aforesaid conditions.

Source.—Former § 71, as amended by L. 1906, chap. 326; originally revised from L. 1851, chap. 95, § 1; L. 1853, chap. 463, § 5, and § 6, as amended by L. 1881, chap. 560; L. 1865, chap. 328, § 2; L. 1877, chap. 439, § 1, as amended by L. 1881, chap. 628.

See § 13, ante. Deposit of securities.

See § 16, ante. Investment of capital and surplus.

See § 17, ante. Securities must be interest or dividend paying.

See § 18, ante. Stocks in other corporations.

See § 26, ante. Deposits by insurance corporations of other states.

See § 50 et seq., ante. Stock Corporation Law, chap. 61 of 1909, as to issue and transfer of stock.

An insurance company of a sister state, doing business here under a special statute applicable thereto, has no greater rights than those conferred by the statute in question. Attorney-General Rep., 1892, page 392.

DEPOSIT.—The securities deposited by a foreign insurance company with the insurance department are to be held for the benefit of those policyholders insured in the same class or classes of insurance which the company is authorized to write in this state. Attorney-General Rep., 1892, page 389.

A foreign company must deposit in home state \$100,000 for each kind of insurance which it is organized to transact under § 70, or \$250,000 if for three or more kinds. In re General I. Co., Attorney-General Rep., Jan. 8, 1906.

All deposits by a surety company with the superintendent constitute a single fund which is impressed with a trust for the benefit of all policyholders of the depositing corporation, and a surety company doing business under two subds. of § 70 may not, by amending its charter so as to restrict its business to one subdivision only, withdraw a portion of such deposit. Attorney-General Rep., Aug. 14, 1908.

Section 71 only requires that the superintendent of insurance shall compel life insurance companies to keep on deposit with him securities to the value of \$100,000. *Raymond v. Sec. Trust & Life Ins. Co.*, 111 App. Div., 191.

A foreign life insurance company may be admitted to do business in this state on making the deposit of \$200,000 required by section 27 of the Insurance Law, although the entire capital stock of such company is not paid up. Attorney-General Rep., 1893, page 280.

Only securities to the extent of the amount specified in the statute are to be held by the superintendent of insurance in trust for the benefit of policyholders. Attorney-General's Rep., July 1, 1909.

AMENDMENTS TO CHARTER.—Amendments to charter of an insurance company, which do not enlarge its franchises, do not render necessary a republication of the notice of intention to organize.

An insurance company whose charter and declaration were filed and approved, but which was not organized under the former law, may be organized under the present Insurance Law without republication of notice. Attorney-General Rep., 1892, page 394.

REDUCTION OF STOCK.—Capital stock may be reduced without payment of the full amount of stock named in original certificate, and the filing of said certificate of reduction of stock and the endorsement thereon of the superintendent of insurance operates as an amendment to the original certificate. Attorney-General Rep., 1903, page 249.

All deposits made by a surety company with the Superintendent of Insurance constitute a single fund, which is impressed with the trust for the benefit of all the policyholders of the depositing corporation. The words "as if corporations had been separately formed for such purposes," as used in § 71, do not change this proposition, as such words are used merely to determine the aggregate amount of the deposit required. Attorney-General Opinion, August 14, 1908.

§ 72. Withdrawal of securities upon relinquishment of business.

When any such corporation shall desire to relinquish its business, the superintendent shall, on the application of such corporation under the oath of its president or principal officer and secretary or actuary give notice of such intention in a paper at Albany in which notices by state officers are required by law to be published at least twice a week for six months. After such publication, he shall deliver up to such corporation the securities held by him belonging to it, upon being satisfied by an exhibition of the books and papers of such corporation and on examination made by himself or by some competent person to be appointed examiner by him, and upon the oath of the president or principal officer and the secretary or actuary of such corporation that all its debts and liabilities of every kind are paid and extinguished that are due or may become due, upon any contract or agreement made within the United States.

The superintendent may also, from time to time, deliver up to such corporation, or its assignees, any portion of such securities on being satisfied, in the manner and form hereinbefore required, or upon any other competent proof, that all the debts and liabilities of every kind that are due, or may become due, within the United States are less than the amount of the portion of such securities he shall still retain.

Any foreign life insurance corporation desiring to discontinue business in this country and having made the publication hereinbefore required, may, in the discretion of the superintendent of insurance withdraw one-half of its deposits on registering, according to the provisions of law for the registry of policies, all its outstanding policies issued to citizens or residents of the United States, and covenanting to maintain unimpaired the reinsurance deposit for such registered policies for all future time, and specially pledging for their security all future premiums payable on American policies.

Source.—Former § 72; originally revised from L. 1851, chap. 95, § 8; L. 1853, chap. 463, § 19, as amended by L. 1869, chap. 829.

EXCESS DEPOSITS.—Excess deposits should not be withdrawn “until all the conditions of the trust have been complied with.” Attorney-General Rep., 1903, page 476.

Excess deposits, form of delivery of, to surety companies by superintendent of insurance. Attorney-General Rep., 1903, page 489.

RETURN OF SECURITIES.—The superintendent of insurance may return to the depositors the securities which were deposited as a condition precedent to insurance business where the corporation determined not to start in business and there were no liabilities against said corporation. In re People's Life Insurance Company, Attorney-General Rep., 1896, page 133.

Superintendent of insurance should not surrender the securities on deposit in insurance department for the benefit of policyholders in the United States. In re Baloise Fire Ins. Co., Attorney-General Rep., 1903, page 424.

Insurance companies retiring from business may withdraw from deposit with the superintendent of insurance all securities in excess of an amount sufficient to secure policyholders in the United States. Such deposits are held in trust for all such policyholders. Attorney-General Rep., 1893, page 216.

The provisions of § 72, relating to the withdrawal of securities deposited, apply only to such corporations as shall desire to relinquish all business in this state. The Superintendent of Insurance holds the securities as trustee for the policyholders and he should not surrender any part of such deposit except by express direction either of the legislature or the court. Attorney-General's Opinion, August 14, 1908.

§ 73. Special deposits to secure registered policies and annuity bonds.

Any domestic life insurance corporation may deposit with the superintendent of insurance securities of the kinds and in addition to the amount now required and authorized by law to be deposited with him, to any amount not less than twenty-five thousand dollars, which shall be legally transferred by it to the superintendent for the common benefit of all the holders of its registered policies and annuity bonds issued under the provisions of this article, and he shall hold the same in trust for the purposes and objects specified in this article; provided that no policies shall be registered or annuity bonds issued under the provisions of this section after the thirty-first day of December, nineteen hundred and ten.

Such securities shall not be alienated from the purposes of such trust, nor transferred except in the manner provided in this article, and such transfer must be made by the superintendent under his seal of office upon the written application, under its corporate seal, of the corporation making the deposit, or of the receiver of such corporation, and in compliance with the laws of the state relating to such transfers. When such securities shall have been legally

transferred to the superintendent, he shall issue to such corporation registered policies of insurance or annuity bonds of such denominations or amounts as the corporation may require. Such policies or bonds shall bear upon the face thereof the words "the reserve on this policy (or bond) is secured by pledge of public stock or bonds and securities" with the seal of the department, and shall be countersigned by the superintendent or his authorized deputy.

The corporation shall be charged by the superintendent upon the delivery of such policies or bonds with the amounts of the net value thereof at the end of the policy year, valued according to the provisions of section eighty-four of this chapter, making proper allowances for semi-annual, quarterly or monthly premiums, but in no case shall the amount of securities deposited under the provisions of this section be less than the amount of such aggregate values.

Source.—Former § 73, as amended by L. 1906, chap. 326; originally revised from L. 1869, chap. 902, §§ 2-4.

Amended by L. 1910, chap. 697.

See § 13 et seq., ante. Deposit of securities.

CONSTITUTIONAL.—An act authorizing deposit with superintendent is not unconstitutional under article 8, section 1, New York State Constitution. Attorney-General v. North Amer. L. Ins. Co., 82 N. Y., 172.

COMMISSIONS.—The proceeds of the securities deposited with the superintendent are assets in the hands of the receiver, and he is entitled to commissions thereon. Attorney-General v. North Am. Life Ins. Co., 89 N. Y., 94.

RECEIVER.—Under the provisions of chapter 902 of 1869, relative to deposits with the superintendent of insurance, it was held that it was the duty of the superintendent, where a receiver of such a company has been appointed, to convert the securities deposited with him into cash and pay over to the receiver the proceeds, to be applied by such receiver in payment of registered policies and annuities. Attorney-General v. North Am. Life Ins. Co., 85 N. Y., 485.

§ 74. Annual report of corporation of registered policies and annuity bonds.

Every such corporation shall annually on July first or within sixty days thereafter report to the superintendent of insurance under the oath of the president and actuary the exact condition of the registered policies received from the superintendent and of the premium account of such policies, and shall deposit with the superintendent additional securities of the kind in which the

minimum amount of cash capital of domestic insurance corporations is required to be invested by the provisions of section sixteen of article one of this chapter, to an amount equal to any increase in value of the policies heretofore issued and which shall remain in force, valued by the same rule as upon the issue thereof. No one bond or mortgage so deposited shall be for a less sum than five thousand dollars. The securities thus from time to time deposited, or so large an amount thereof as may be necessary to equal at all times, the net value of all the outstanding registered policies and annuity bonds of such corporation, shall be held by the superintendent in trust, as provided in the preceding section, until the obligations of such corporation under such registered policies and annuity bonds, shall, to the satisfaction of the superintendent, be fully liquidated, canceled and annulled.

The state shall not be deemed to have incurred any obligation to pay the policies and annuity bonds so issued, beyond the proper application of the securities so deposited towards their liquidation, as in this article provided.

The treasurer of the state, and any person duly authorized by the depositing or reinsuring corporation, shall, at all times, in the usual office hours, have access to the books and other documents in the insurance department relating to the deposits made, and policies and annuity bonds issued, under the provisions of this article, and to such securities as may be necessary for the examination thereof.

The treasurer shall for the services required by this chapter receive an annual salary of two hundred and fifty dollars to be paid by the corporations availing themselves of the provisions of this and the preceding section.

Any such depositing corporation may at any time withdraw any excess of securities above the net present value hereinbefore specified, upon satisfying the superintendent by written proof to be filed in the department that such excess exists, and shall be allowed to receive the interest on all securities deposited and to exchange such securities by substituting other securities of the kind in which the minimum amount of cash capital of domestic insurance corporations is required to be invested by the provisions of section sixteen of article one of this chapter.

Source.—Former § 74; originally revised from L. 1869, chap. 902, §§ 4-5.

Amended by L. 1911, chap. 325.

See § 297, Penal Law. Misconduct of officers as to report.

See § 665, Penal Law. Misconduct of officers and employees as to written statement or report.

§ 75. Registration of policies and annuity bonds.

Such corporation shall deliver to the superintendent of insurance the policy and annuity bonds engraved and printed or printed and written in such manner as the superintendent shall direct, with duplicate originals of the same duly signed. On their receipt by the superintendent he shall cause them to be duly registered in proper books kept for that purpose, in consecutive numbers, corresponding to the numbers on such policies and bonds, and shall cause his name or the name of his deputy to be inscribed on the policies and bonds and affix the seal of the department to the same, and shall return the original policies to the depositing corporation. The expenses necessarily incurred in registering, countersigning and sealing such policies and annuity bonds, and in otherwise executing the provisions of this article, including the salary of the treasurer, shall be audited and paid out of any moneys in the treasury not otherwise appropriated. For the purpose of reimbursing the same the superintendent shall charge against the depositing corporations respectively an amount sufficient for such purposes as may be just and reasonable. The superintendent shall receive mutilated policies and annuity bonds issued to any such corporation and deliver in lieu thereof other policies and bonds of like tenor and date, and, in case of lost policies or bonds, furnish certified copies of the duplicates on file in his office.

Source.—Former § 75; originally revised from L. 1869, chap. 902, § 6.

§ 76. When depositing corporation to be deemed insolvent.

If at any time the affairs of any such depositing corporation shall, in the opinion of the superintendent of insurance, appear to be in such a condition as to render the issuing of additional policies and annuity bonds by the corporation injurious to the public interests, such corporation shall be deemed insolvent and the superintendent shall report the fact to the attorney-general, who shall bring such action or institute such proceedings as may be authorized by law to be taken against an insolvent insurance

corporation. If in any such action or proceeding it shall appear to the satisfaction of the court that the assets and funds of the corporation are not sufficient to justify its further continuance of the business of insuring lives, granting annuities and incurring new obligations as authorized by its charter, it shall enjoin and restrain the corporation from the further transaction of its business and appoint a receiver of its assets and credits, who, upon filing his bond to the people of the state in an amount and with sureties approved by the court, conditioned for the faithful performance of his duties, shall take possession of all such assets and credits, including the securities deposited in the insurance department.

Source.—Former § 76; originally revised from L. 1869, chap. 902, § 7.

See § 297, Penal Law. When insolvency of a monied corporation is deemed fraudulent.

RECEIVER.—Where the company has been declared to be insolvent and its affairs put into the hands of a receiver, judicial action thereafter must follow the statute; where the actuary's report shows that the company is not able to go on with its business, the assets must be turned into money, liabilities paid, and the corporate affairs closed up; the Supreme Court cannot order the receiver to call for premiums and keep up the business of the company, nor can it discharge the receiver and give back the property to the corporation. *Attorney-General v. At. Mut. Ins. Co.*, 77 N. Y., 336.

SUFFICIENT CAUSE.—Where it appeared by the proofs that the assets of the company were less than the amount of the values of the outstanding policies by about one-tenth of that amount; that the capital stock was entirely sunk; that the assets were of a kind not readily convertible or available; that a large share of the assets had been kept as a cash deposit with a private banker, who was an officer of the company, without any agreement as to interest and without security as to loss; that the trustees were not in the practice of holding regular meetings, or of supervising the affairs of the company; that the dividends were paid without a regular meeting or a vote of the board of trustees, when there had been losses and a depreciation in the value of the assets, and when it was impossible to know whether or not the capital had been impaired, held that there was sufficient cause for interference. *People v. Atlantic Mut. Ins. Co.*, 74 N. Y., 177; aff'g 53 How. Pr. 300.

The Supreme Court has no power to review the preliminary action of the superintendent in making his report; if an error has been committed or mistake made by the superintendent, the hearing, and that alone, will remedy it; but it must be proved to the satisfaction of the court, upon the investigation, that there is danger to the public interests by the continuance of the business of the company, before it would be warranted in making the final order, arresting future operations and appointing a receiver. *Attorney-General v. At. Mut. Ins. Co.*, 53 How. Pr., 227.

TITLE OF RECEIVER.—Assets means all the property, real and personal, of the company, and the receiver, upon his appointment, becomes vested with the title to all the property of the company, including its real estate, and no

formal conveyance to him thereof is requisite. *Matter of Attorney-General v. Ins. Co.*, 100 N. Y., 279.

A decree dissolving a company and appointing a receiver vests in the receiver all the property of the company; a receiver may maintain an action to set aside fraudulent transfers of property by the company; the Supreme Court, having acquired jurisdiction of proceedings for winding up a corporation, and having appointed a receiver, has jurisdiction to stay the suit of a creditor brought to recover assets to which the creditor is entitled, in whatever court such suit may be pending. *Attorney-General v. Guard. Mut. L. Ins. Co.*, 77 N. Y., 272; *rev'g* 15 Hun, 18.

Where a receiver has been appointed of a registered policy life insurance company, and the superintendent has sold the securities deposited with him to secure such policies, the receiver is entitled to have the proceeds immediately paid over to him; the superintendent has no right to retain the fund until the receiver is ready to distribute it. *Matter of Attorney-General v. North Am. Ins. Co.*, 80 N. Y., 152.

The provision of this section which empowers receivers to take possession of the assets of the company, including the securities deposited in the state insurance department, refers only to companies issuing registered policies and annuity bonds. *People v. Insurance Co.*, 147 N. Y., 25.

STAY OF PROCEEDINGS.—The statute does not authorize the court to stay proceedings by creditors, pending an application to wind up the affairs of the company. *Whritner v. Universal Ins. Co.*, 4 Abb. N. C., 23.

OTHER ACTIONS.—The fact that the affairs of a life insurance company are being wound up and adjusted in proceedings under the care of a receiver, will not prevent the court from entertaining an equitable action to ascertain and enforce the rights of policyholders in the company, either on the ground that there is a conflict of jurisdiction nor on the ground that a multitude of suits may be brought. *Bedell v. North Am. Ins. Co.*, 7 Daly, 273.

PARTIES.—In proceedings by the attorney-general for the appointment of a receiver of a life insurance company, the court has jurisdiction to permit parties interested in the administration of the assets of the corporation to appear and represent their own interests, and to be made parties to all proceedings taken by or against the receiver by which their rights may be affected. *Attorney-General v. North Am. Life Ins. Co.*, 77 N. Y., 297.

EXCEPTIONS.—The receiver of an insolvent insurance company, appointed under the insurance act of 1869, could file exceptions to the report of the referee appointed to take proof of claims. *Attorney-General v. North Am. Ins. Co.*, 82 N. Y., 172.

INVESTMENT OF FUNDS.—The receiver has no authority without the direction or consent of the court, to invest the money in his hands; in the absence of directions it is his duty simply to keep and protect the trust fund, and hold it ready for distribution. *Attorney-General v. North Am. Ins. Co.*, 89 N. Y., 95.

INSOLVENT COMPANY.—An insolvent life insurance company organized under the laws of this state, may be dissolved and its affairs wound up at the instance of a single stockholder. *Masters v. Eclectic Life Ins. Co.* 6 Daly, 455.

FORFEITURE OF POLICY.—One holding a policy of life insurance does not forfeit his policy by omitting to pay annual premiums thereon after the com-

pany issuing the policy has ceased to do business, transferred all its assets and become insolvent. *People v. Empire Mut. Ins. Co.*, 92 N. Y., 105.

CONTRACTS OF COMPANY.—When a registered policy life insurance company which has entered into a contract with a general agent for his services for a specified term at a stipulated salary, before any breach of the contract on its part, is restrained from further prosecuting its business or exercising its corporate franchises by order of the court, and a receiver of its assets is appointed, the agent has no valid claim upon the fund in the hands of the receiver for damages for alleged breach of contract, because of the discontinuance of the employment; there is in such case, no breach on the part of the company, as performance is prevented and the contract dissolved by the action of the state. *People v. Globe Mut. Life Ins. Co.*, 91 N. Y., 174.

SERVICES OF ATTORNEY.—An action is not maintainable against the receiver of an insolvent life insurance company, to recover for services rendered by an attorney to the corporation after the appointment of a receiver; the company or its agents cannot, after such an appointment, subject the funds in the receiver's hands to any legal liability. *Barnes v. Newcomb*, 89 N. Y., 108.

In a suit to distribute the assets of a defunct insurance company, no allowances should be granted to the counsel of the intervening creditors payable out of the fund, whether such allowance be claimed under the Code or whether they are claimed as reasonable counsel fees earned by the counsel of these creditors. *Attorney-General v. Continental Ins. Co.*, 63 How. Pr., 129.

§ 77. Proceedings by receiver.

Such receiver shall immediately, on entering upon the duties of his office, appoint a competent actuary, approved by the superintendent of insurance, who shall make a careful investigation according to the standard fixed by the laws of this state into the condition of the corporation, and report thereon in writing, under oath, to the court, the superintendent and the receiver. If it shall be found by such report that the securities deposited by such corporation in the insurance department and its assets and credits, including the future premiums that will mature on outstanding policies and other obligations, are sufficient under the laws of the state to pay all the policies, annuities and other obligations of the corporation as they may mature by the terms thereof and the legal costs and expenses incident to the business, and if, upon due notice to the superintendent, such actuary's report shall be confirmed by the court, the receiver shall be discharged and all the properties and effects of the corporation shall be immediately returned to the same.

If the report of the actuary shall show that such securities, assets, credits and premiums are not sufficient under the laws of the state to pay all the policies, annuities and other obligations of the corporation as they may mature by the terms thereof, and the legal costs and expenses of the receivership, and the report shall, upon due notice to the superintendent, be confirmed by the court, the court may direct the conversion of the securities held by the superintendent into money for the purpose of distribution, and the superintendent shall, thereupon, with the consent and advice of the treasurer of the state, and in such manner as the receiver, superintendent and treasurer, or a majority of them, shall determine, sell and convert such securities into money. The proceeds of such securities, when required for distribution, and when the court shall make an order for that purpose, with suitable provision for the safety of the moneys, shall be paid to the receiver on his giving his receipt to the superintendent and shall be applied by the receiver, under the direction of the court, to the payment of the registered policyholders of the corporation in proportion to the net value of their policies respectively, and to the registered annuities of the corporation, in proportion to the then present value of their respective annuities, as estimated by the legal standard for valuing life insurance and annuity obligations within this state. The surplus of the proceeds of such securities, if any there be, with all the other assets of the corporation, shall then be applied to the payment of all the just debts of the corporation incurred in continuing and carrying on its lawful business.

Source.—Former § 77; originally revised from L. 1869, chap. 902, § 8, as amended by L. 1880, chap. 168.

See § 79, post. Annual investigation of affairs of company.

POWERS OF RECEIVER.—The receiver of a dissolved insolvent insurance company primarily represents the company, as well as all persons interested in the assets, including the policyholders, and possesses whatever rights the corporation possessed and might have enforced against its trustees for misfeasance in office; the receiver of an insolvent corporation may enforce the liability of its trustees or directors to make good the loss occasioned by the company by their misapplication of assets, either by an action at law for damages or by an action in equity for an accounting. *Mason v. Henry*, 152 N. Y., 529.

A promissory note given upon an agreement for insurance to be consummated upon the organization of a mutual insurance company may be collected

by the receiver upon the insolvency of the company. *White v. Haight*, 10 N. Y., 310; *Hart v. Achilles*, 28 Barb., 576.

A receiver, so far as relates to his conduct, the distribution of assets, or any of the proceedings subsequent to his appointment, is governed by the provisions of the statutes in relation to corporations, and by the practice of courts of equity. *People v. Security Life Ins. Co.*, 78 N. Y., 114.

The receiver of an insolvent insurance company may, at any time, apply to the court for instructions in regard to any matter touching the fund placed in his custody. *People v. Security L. Ins. Co.*, 79 N. Y., 267.

Before amendment of this section, the receiver had no authority to require from the superintendent the securities deposited with him, and the court had no power to compel the superintendent to transfer the trust imposed upon him. *Ruggles v. Chapman*, 59 N. Y., 163; *People ex rel. Ruggles v. Chapman*, 64 N. Y., 557.

ACTION, BY WHOM BROUGHT.—A stockholder or a creditor of a life insurance company cannot bring an action for the dissolution of the company and the distribution of its assets. *Attorney-General v. Continental L. Ins. Co.*, 53 How. Pr., 16.

ACTUARY'S REPORT.—Practice on motion to confirm actuary's report. *People v. Globe Mut. L. Ins. Co.*, 60 How. Pr., 57.

The duties of the actuary terminate with his report, unless such duties are continued by the court, and the compensation which is to be paid must be fixed by the court, and is not under the control of the receiver, superintendent of insurance or actuary. *Matter of North Am. Ins. Co.*, 55 How. Pr., 465.

In case the actuary's report sustains the solvency of the company, it must be confirmed by the court before the business can be continued as the statute directs; such confirmation is not required when the actuary's report is adverse to the company's solvency. *Matter of Atlantic Mut. Ins. Co.*, 55 How. Pr., 77.

Where the company has been declared to be insolvent and its affairs put into the hands of a receiver, judicial action must thereafter follow the statute; where the actuary's report shows that the company is not able to go on with its business, the assets must be turned into money, liabilities paid, and the corporate affairs closed up; the Supreme Court cannot order the receiver to call for premiums, and keep up the business of the company, nor can it discharge the receiver and give back the property to the corporation. *Attorney-General v. At. Mut. Ins. Co.*, 77 Hun, 336.

PARTIES DEFENDANT.—Parties claiming interest in funds in hands of a receiver should not be made parties defendant. *People v. Family Fund Soc.*, 31 App. Div., 627.

PREFERENCE.—A creditor of an insolvent corporation whose debt accrued by reason of a loan to the company to pay a loss which had occurred previous to the calamity which rendered the company insolvent, is not entitled to a preference in payment out of the funds which the company held beyond their capital stock at the time of such calamity. *De Peyster v. Am. Fire Ins. Co.*, 6 Paige, 486.

Holders for claims for death losses, and the holders of assignments of such claims, are to be first paid by the receiver, and the balance remaining in his

hands is to be divided pro rata among all the other creditors. *Kitchen v. Conklin*, 51 How. Pr., 308.

RESERVE FUND.—As to right of policyholders and claimants to share in the reserve fund. *Matter of Equitable Reserve Fund Ass'n*, 131 N. Y., 354.

SALARIES OF OFFICERS.—The officers of an insolvent corporation are not entitled to have their salaries paid in full in preference to the debts of other creditors; they are only entitled to be paid their ratable proportion of the assets of the company as between them and other creditors. *Matter of Croton Ins. Co.*, 3 Barb. Ch., 642.

UNEARNED PREMIUMS.—The unearned premiums received in advance upon policies of insurance are not surplus profits which the directors are authorized to distribute as dividends among the stockholders of the company, but are the ordinary means, or primary fund, out of which the losses upon such policies should be paid. *Scott v. Eagle Fire Co.*, 7 Paige, 198.

PAYMENT OF PREMIUMS.—At the time of the appointment of a receiver, certain policies were running upon which premiums had been paid to some time subsequent to that date; the receiver gave notice that he would receive no more premiums; the persons insured died after the time to which premiums had been paid; the referee allowed the claims on these policies. Held, no error; that further payments of premiums were excused by the failure of the company, as well as by the express notice of the receiver; also, that the claimants were entitled each to be allowed the present value of the policy at the time of the dissolution of the company and the appointment of the receiver, deducting the amount of premiums unpaid at the time of death. *Attorney-General v. Guardian Mut. L. Ins. Co.*, 82 N. Y., 336.

§ 78. Additional duties of receiver.

Whenever the business of any such corporation shall be continued under the provisions of the next preceding section, if the receipts for premiums and from all other sources shall at any time be in excess of the sums required to meet the policy and other obligations of the corporation, such receiver, whenever such excess shall amount to twenty-five thousand dollars, shall invest the same in such securities as are authorized to be deposited in the insurance department, and shall deposit such securities with the superintendent of insurance in the manner herein provided.

Source.—Former § 78; originally revised from L. 1869, chap. 902, § 9.

The receiver has no authority without the direction or consent of the court to invest the money in his hands; in the absence of directions it is his duty simply to keep and protect the trust fund, and hold it ready for distribution. *Attorney-General v. North Am. Ins. Co.*, 89 N. Y., 94.

§ 79. Annual investigation of affairs of such corporation; disposition of surplus.

An investigation shall annually be made on the first day of January, or within thirty days thereafter, by a competent actuary approved by the superintendent of insurance, into the affairs of such corporation. If, upon such investigation, it shall be found that a surplus of its assets, not less in amount than ten thousand dollars, exists, after making adequate provision for meeting after maturity all the obligations of the corporation and all the legal expenses of the receivership, and in case of a joint-stock corporation, over and above the amount of its capital, such portion of such surplus as may, under the charter of the corporation, if a stock corporation, belong to its stockholders, shall be set aside and invested by the receiver in such securities as are authorized to be deposited by life insurance corporations in the insurance department as a contingent fund, and scrip therefor shall be issued by the receiver to such stockholders, respectively, in proportion to their respective shares bearing six per cent. interest, and payable on the final settlement of the affairs of the corporation as herein provided. The remainder of such surplus, if the corporation be a stock corporation, and the whole of such surplus, if it be a mutual corporation, shall be disposed of as follows: One-quarter thereof shall be reserved by such receiver and invested by him in such securities as a contingent fund, for which scrip shall be issued by such receiver to all policy holders entitled under their policies to share in the surplus of the corporation. Such scrip shall bear interest at the rate of six per cent., payable annually, and shall be redeemable on the maturity of the policy on account of which the scrip was issued.

The remaining three-fourths of such surplus shall be paid by the receiver within one year from such first day of January, to such policy holders respectively in lawful money of the United States. No scrip shall be issued for any fractional part of a dollar, and any scrip so issued may at any time be called in and canceled by the receiver without payment, if necessary, to better secure the remaining obligations of the corporation, and all the scrip so issued shall have printed thereon a clause to the following

effect: If, on the final accounting of the receiver, after the liquidation of all the obligations of the corporation as herein provided, and in case of a joint-stock corporation the return to the respective stockholders of their respective amounts of stock and the scrip issued to them under this section, there shall remain a surplus in the hands of the receiver, it shall be divided by him among the stockholders, if in a stock corporation, proportionately to their respective shares, as provided by the charter of the corporation, and the balance of such surplus, if any, among the last ten policy holders of the corporation or their legal representatives in proportion to the amounts of their respective policies, and if not a stock corporation, among the holders of the last ten policies issued by the corporation or their legal representatives in proportion to the amount of their respective policies.

Source.—Former § 79; originally revised from L. 1869, chap. 902, § 10.

See notes and annotations under §§ 76 and 77.

VALUATION OF POLICIES.—The damages for every policy of insurance should be computed according to the facts as they existed upon the last day of the presentation of claims to the receiver, and that in the exercise of a sound discretion the court should not take into consideration the fact that death had subsequently occurred in making such valuation; when the policies have been valued and a dividend made which was ascertained and computed upon the facts as they existed on the day when claims were required to be presented, they should not be revalued because a death had since occurred. *Matter of Attorney-General v. Continental Ins. Co.*, 64 How. Pr., 73.

Claims under policies of a life insurance company which has been dissolved for insolvency and placed in the hands of a receiver, in an action instituted by the attorney-general, must be valued and determined, and their status fixed as of the date of the commencement of the action for dissolution, and are not affected by the death of the insured after that date and before the distribution of assets. *Attorney-General v. Guard. Life Ins. Co.*, 82 N. Y., 336.

REVALUATION.—When a claim will not be revalued on account of the uninsurable condition of the assured at the time of the valuation. *People v. Knickerbocker Ins. Co.*, 38 Hun, 601.

Where, after the expiration of the time specified in the published notice for the presentation of claims to a receiver of an insolvent life insurance corporation, certain policyholders, whose claims had been presented and allowed, died, the court held that it had power to direct a revaluation of such policies, and the exercise of this power was within its discretion; and that therefore an order denying an application for such revaluation on the ground solely of lack of power was error. *Matter of Attorney-General v. Continental Ins. Co.*, 88 N. Y., 77.

DEATH CLAIMS.—An order was made directing a claim, under a policy issued by defendant, to be filed with the receiver as of August 15, 1883, and

directing a reference for its valuation; before the hearing the person upon whose life the policy was issued died, and evidence was given tending to show that at the time when the company became insolvent and suspended its business he had attained an age and had become subject to a mortal disease which would have precluded a reinsurance or further insurance of his life by any life insurance company in good standing; the disease continued until the time of his death, and was in part the cause of that event; it was shown upon the hearing that no disturbance in the accounts or dividends of the receiver would be made by valuing this as a death claim, and that it could be provided for and disposed of as such without substantial injustice to other claimants. *People v. Knickerbocker Ins. Co.*, 40 Hun, 44.

When, after a policy in an insolvent insurance company has been valued and placed upon the receiver's dividend list, the holder thereof dies, the court will not, upon the application of his executor, direct that the policy be revalued as a death claim and order the receiver to pay dividends thereon upon the basis of the latter valuation. *People v. Sec. Ins. Co.*, 23 Hun, 601.

Where the insured died after the claim on the policy was presented to the receiver and the proofs required by the policy were afterward filed and retained by the receiver, the wife was entitled to have her policy valued upon the basis of her husband's death, and not as an existing and continuing insurance. *People v. Knickerbocker Life Ins. Co.*, 34 Hun, 476.

COUNTERCLAIM.—Where, at the time of the appointment of the receiver, the insurance company held certain claims against the defendant and the defendant held two endowment policies not yet due, issued by the company, the defendant was not entitled to offset the reserve value of the policies *Newcomb v. Almy*, 96 N. Y., 308.

ACCOUNTING OF RECEIVER.—Where, during the pendency of proceedings for an accounting instituted by the receivers of an insolvent insurance company, one of the receivers dies, the court has power to make an order reviving and continuing the accounting against his executors and directing them to come into such accounting and stand by such orders and decrees as may be made therein. *Matter of Columbian Ins. Co.*, 30 Hun, 342.

§ 80. Existing corporations.

Any life insurance corporation which by virtue of any law was making deposit of securities and receiving registered policies on the eighteenth day of May, eighteen hundred and ninety-two, shall make such deposits and receive such policies in accordance with this chapter, and not otherwise. Such corporation shall be authorized to issue such policies and annuity bonds as shall be registered under this article, and shall, whenever required by the holders of its unregistered policies and annuity bonds, issued previous to the passage of this chapter, upon their compliance with the terms and conditions of such corporation for registered policies and annuity bonds, issue to them respectively, registered policies and annuity

bonds in exchange for and in value equal to those previously issued to them. Any corporation availing itself of the provisions of this article, may issue unregistered policies and annuity bonds as heretofore authorized by its charter, but subject to the provisions of this article in relation to the distribution of its assets.

Source.—Former § 80; originally revised from L. 1853, chap. 463, § 21, as amended by L. 1880, chap. 427; L. 1869, chap. 902, § 11.

§ 81. Powers of receiver.

The receiver of any such corporation shall have all the powers incident to the successful management of its affairs, and, to that end, authority to purchase policies issued by the corporation, to make any other compromise or settlement of its outstanding obligations, and to use the corporate seal of the corporation whenever necessary to the transaction of the business of his receivership.

The receiver may employ such clerks and actuaries as he may deem necessary for the proper conduct of his business as such receiver, and such clerks and actuaries shall be paid such reasonable compensation as he may determine, subject, however, to the approval of the superintendent of insurance. The compensation of such receiver, clerks and actuaries shall be a charge upon the funds of such corporation and paid out of such funds.

Source.—Former § 81; originally revised from L. 1869, chap. 902, §§ 12, 13.

FEES.—The Supreme Court has power in the first instance to order the fees of a referee, appointed to take proofs and report as to the claims of a receiver of an insolvent life insurance company for compensation and expenses, to be paid out of the fund. *Attorney-General v. Continental Life Ins. Co.*, 93 N. Y., 45.

Where a receiver has advanced money to pay taxes on lands covered by mortgages in the hands of the superintendent then being foreclosed, which advances were repaid from the proceeds of the foreclosure, the receiver is not entitled to commissions upon the sum so refunded. *Attorney-General v. North Am. Ins. Co.*, 89 N. Y., 94.

SERVICES OF ATTORNEY.—An attorney who, upon the retainer of certain of the policyholders in an insolvent insurance company, has appeared and resisted improper claims made by the receiver against the assets in his hands, has no legal claim to be compensated for such services by the receiver out of the assets of the corporation. *Attorney-General v. Continental Life Ins. Co.*, 31 Hun, 623.

An action is not maintainable against the receiver of an insolvent life insurance company to recover for services rendered by an attorney to the

corporation after the appointment of the receiver; the company or its officers cannot, after such an appointment, subject the funds in the receiver's hands to any legal liability. *Barnes v. Newcomb*, 89 N. Y., 108.

SPECIAL COUNSEL.—The attorney-general has no authority to appoint special counsel to act generally for him in the conduct of suits or proceedings in which the state is interested; and no authority exists to employ counsel to aid him, save where it is expressly authorized by statute. *Matter of Attorney-General v. Continental Ins. Co.*, 88 N. Y., 571.

§ 82. When receiver shall not be appointed, or new policies issued.

No receiver for any life insurance corporation shall be appointed if such corporation has actual funds invested according to law, of a net cash value equal to its outstanding liabilities, exclusive of any contingent liability incurred under the provisions of section seventy-one of this chapter relating to the organization of a mutual corporation, and a sufficient reserve on policies and claims not matured, calculated according to the American experience table of mortality, with interest at four and one-half per centum per annum, and in computing such liabilities, capital stock shall be considered as a liability of the corporation. But no such corporation shall issue new policies if its capital stock is impaired to the extent of fifty per centum thereof, after charging said corporation with a reserve liability calculated according to the provisions of section eighty-four of this chapter, until such impairment is made good; in the case of a corporation having no capital stock, it shall not issue new policies if its assets are less than its liabilities as above defined and upon the basis last before mentioned, until such deficiency is made good.

Source.—Former § 2, as amended by L. 1901, chap. 514, and L. 1906, chap. 326; originally revised from L. 1884, chap. 341, § 2; L. 1887, chap. 328.

§ 83. Distribution of surplus to policy holders.

Except as herein provided, every domestic life insurance corporation heretofore or hereafter organized, whether incorporated by special act or under a general statute, anything in its charter or certificate of incorporation or in such special act or general statute to the contrary notwithstanding, shall provide in every policy issued on or after the first day of January nineteen hundred and seven,

that the proportion of the surplus accruing upon said policy shall be ascertained and distributed annually and not otherwise. Upon the thirty-first day of December of each year, or as soon thereafter as may be practicable, every such corporation shall well and truly ascertain the surplus earned by such corporation during said year. After setting aside from such surplus such sums as may be required for the payment of authorized dividends upon the capital stock, if any, and such sums as may properly be held for account of existing deferred dividend policies, and for a contingency reserve not in excess of the amount prescribed in this article, every such corporation shall apportion the remaining surplus equitably to all other policies entitled to share therein. Except in the case of a term or an industrial policy, the share of surplus so apportioned in the case of a policy issued on or after the first day of January, nineteen hundred and seven shall, at the option of the owner of the policy, be payable in cash, or shall be applicable to the payment of any premium or premiums upon said policy or to the purchase of a paid-up addition thereto or shall be permitted to accumulate to the credit of the policy at such rate of interest as shall be allowed by the company, and with such interest shall be payable upon the maturity of the policy or shall be withdrawable in cash by the owner of the policy on any anniversary of the date of issue thereof. Such corporation may require the owner of the policy to elect the manner in which said dividends shall be applied as above provided by mailing a written notice of the amount of the said dividends and the options available as aforesaid in a sealed envelope in the manner required by the provisions of this chapter for notices of premium payments, and in case the owner shall fail to notify the company in writing of his election within three months after the date of the mailing of said notice, the surplus shall be applied by the company to the purchase of a paid-up addition to the sum insured. In the case of a term policy issued on or after the first day of January, nineteen hundred and seven the share of surplus so apportioned shall be payable to the owner of the policy in cash or shall be applicable to the payment of any premium or premiums upon said policy, or if so provided in the policy shall be permitted to accumulate to the credit of the policy at such rate of interest as shall be allowed

by the company and in such case shall be payable upon the maturity or expiration of the policy or shall be withdrawable in cash by the holder of the policy on any anniversary of the date of issue thereof. In case of industrial policies the share of surplus so apportioned shall be payable annually in such manner as may be determined by the company with approval of the superintendent of insurance. The dividends declared as aforesaid in the case of a policy issued on or after the first day of January, nineteen hundred and seven, shall be payable respectively either upon the anniversary of the policy next after said thirty-first day of December or upon a day certain in the year following said date, according to the rules of the corporation or the terms of the policy, and upon the sole condition that the premium payments for the policy year current upon said thirty-first day of December shall have been completed.

This section shall not apply to any stock life insurance corporation which on or after the first day of January, nineteen hundred and seven, shall transact and shall represent itself as transacting its business exclusively upon a nonmutual basis and shall after said date issue only nonparticipating policies. Nor shall this section apply to paid-up or temporary and pure endowment insurance issued or granted in exchange for lapsed or surrendered policies. A foreign life insurance corporation which shall not provide in every participating policy issued or delivered in this state on or after the first day of January, nineteen hundred and seven, that the proportion of the surplus accruing upon said policy shall be ascertained and distributed annually and not otherwise, and which shall not ascertain and distribute the surplus accruing upon said policies annually either by providing for their payment in cash or their application to the payment of premiums or to the purchase of paid-up additions or for their accumulation as above provided in the case of domestic corporations shall not be permitted to do business within this state.

Source.—Former § 83, as amended by L. 1906, chap. 326; originally revised from L. 1872, chap. 100.

Amended by L. 1915, chap. 617. In effect May 12, 1915.

Note.—The amendment of 1915 provided for annual distribution of surplus to industrial policyholders in such a manner as may be approved by the superintendent. The purpose was to enable a stock company which had changed into a mutual company to continue its former practice of granting

participation in profits to industrial policyholders, which participation had not been a matter of legal right, there being no provision in the statute requiring annual distribution to industrial policyholders.-- Ed.

See § 87, post. Restrictions as to dividends removed.

See § 664, Penal Law, which makes it a misdemeanor for a director to make a dividend except from surplus profits.

EQUITY.—A complaint in an action by the holders of a policy of life insurance against the insurance company, which alleges that the action is brought "as well in behalf of these plaintiffs as of all other policyholders similarly situated who may choose to come in," etc., is necessarily limited to equitable relief. *Taylor v. Charter Oak Ins. Co.*, 9 Daly, 489.

An action by the holder of a policy in a mutual life insurance company for equitable relief cannot be maintained upon an alleged trust in the defendants for the benefit of the plaintiff; the relations between the company and its policyholders are those of contractors, the contract being the policy, by which the liabilities of the company are to be determined. *Hencken v. United States Life Ins. Co.*, 11 Daly, 282.

TONTINE POLICY.—An action on a tontine policy is premature if brought before the tontine period has expired. *Simons v. N. Y. Life Ins. Co.*, 38 Hun, 309.

A life insurance company issuing policies on the tontine or "ten years dividend system," is in no sense a trustee of any particular fund for the holder of such a policy; their relations are simply that of debtor and creditor, and the policyholder at the expiration of the ten years is not entitled to an accounting in the absence of any evidence of misappropriation, wrongdoing or mistake on the part of the company. *Uhlman v. N. Y. Life Ins. Co.*, 109 N. Y., 421.

It was held in Illinois that companies doing business on the tontine savings fund plans do not come within a statute providing for distribution of surplus to policyholders. *Romer v. Equitable Life*, 101 Ill. App. Ct. Rep., 621.

SURPLUS.—Where, under a contract of life insurance, only the proportion of the company's surplus which equitably belonged to the policy was to be credited to it and paid to the policyholder, an ascertainment and determination of that proportion is a condition precedent to the policyholder's right of recovery of any portion of the surplus in an action at law. *Greeff v. Equitable Life Assur. Soc.*, 160 N. Y., 19.

DIVIDENDS.—An insurance company can only pay dividends out of surplus and profits; they cannot lawfully be paid out of capital contributed by shareholders for the purpose of carrying on the company's business and for the protection of its creditors; such dividends are prohibited by § 594 of the Penal Code and § 83 of the Insurance Law. *Berryman v. Bankers' Life Insurance Co.*, 117 App. Div., 730.

The superintendent upon examining a life insurance company as to its financial condition cannot disregard the liability created by the company against itself by the credit and payment of dividends paid out of accumulated surplus and the capital of the company, nor allow as an asset the lien sought to be created on the policy—contracts of those who have been paid the dividends in cash; that is within the power of the company and policyholders to establish their exact financial relation in reference to declared dividends by resorting to the courts. Attorney-General Rep., June 20, 1906.

An insurance company cannot lawfully pay dividends out of capital contributed by shareholders for the purpose of carrying on the company's business for the protection of its creditors, and such dividends are prohibited by section 664 of the Penal Law and section 83 of the Insurance Law. *Berryman v. Bankers' Life Ins. Co.*, 117 App. Div., 730.

POLICIES.—A life insurance company, originally organized on a non-participating basis, which has afterwards elected to do a participating business cannot thereafter return to a nonparticipating basis. *Attorney-General's Opinion*, Sept. 24, 1909.

Application of Dividend.—A policyholder under this section may give notice as to his selection of the manner he wishes his dividend applied, such selection to hold good until further notice, the change, if any, to take effect on an anniversary of the date of issue of the policy. *Ruling of Ins. Dept.*, February 26, 1914.

§ 84. Valuation of policies.

The superintendent of insurance shall annually make valuations of all outstanding policies, additions thereto, unpaid dividends, and all other obligations of every life insurance corporation doing business in this state. All valuations made by him or by his authority shall be made upon the net premium basis. The legal minimum standard for contracts issued before the first day of January, nineteen hundred and one, shall be the actuaries' or combined experience table of mortality with interest at four per centum per annum, and for contracts issued on or after said day shall be the American experience table of mortality with interest at three and one-half per centum per annum; provided that the legal minimum valuation of all contracts issued on or after the first day of January, nineteen hundred and seven, shall be in accordance with the select and ultimate method, and on the basis that the rate of mortality during the first five years after the issuance of said contracts respectively shall be calculated according to the following percentages of the rates shown by the American experience table of mortality, to wit, first insurance year fifty per centum thereof, second insurance year sixty-five per centum thereof, third insurance year seventy-five per centum thereof, fourth insurance year eighty five per centum thereof, and fifth insurance year ninety-five per centum thereof. The superintendent may vary the standards of interest and mortality in the case of corporations from foreign countries as to contracts issued by such corporations in other countries than the United States;

and in particular cases of invalid lives and other extra hazards, and value policies in groups, use approximate averages for fractions of a year and otherwise, and accept the valuation of the department of insurance of any other state or country if made upon the basis and according to the standards herein required in place of the valuation herein required. No policy issued after the thirty-first day of December, nineteen hundred and six, shall be valued as term insurance unless premiums are based upon net term rates; and no policy with level premiums issued after said date shall be valued as term insurance for the first policy year. The legal minimum standard for the valuation of annuities issued after January first, nineteen hundred and seven, shall be McOlintock's "Tables of Mortality among Annuitants" with interest at three and one-half per centum per annum, but annuities deferred ten or more years and written in connection with life or term insurances shall be valued on the same mortality table from which the consideration or premiums were computed, with interest not higher than three and one-half per centum per annum. The legal minimum standard for the valuation of industrial policies issued after the first day of January, nineteen hundred and seven, shall be the American experience table of mortality with interest at three and one-half per centum per annum, provided, that any life insurance corporation may voluntarily value its industrial policies written on the weekly premium payment plan according to the standard industrial mortality table or the substandard industrial mortality table. Any life insurance corporation may voluntarily value its policies, or any class thereof, according to the American experience table of mortality, or if industrial, at its option, according to the standard industrial mortality table or substandard industrial mortality table, at a lower rate of interest than that above prescribed, but not lower than three per centum per annum, and with or without reference to the select and ultimate method of valuation, and in every such case shall report the standards used by it in making the same to the superintendent of insurance in its annual statement, provided that no such standards if adopted shall be abandoned without the consent of the superintendent of insurance first obtained in writing.

Source.—Former § 84, as amended by L. 1893, chap. 147; L. 1901, chap. 346; L. 1906, chap. 326, and L. 1909, chap. 301; originally revised from L. 1853, chap. 463, § 13, as amended by L. 1873, chap. 849; L. 1884, chap. 341, §§ 1, 2.

Amended by L. 1910, chap. 616, and L. 1913, chap. 304.

Note.—The purpose of the amendment of this section by chapter 304 of 1913 was to broaden the powers of the superintendent in reference to receipts of certificates of valuation of life insurance policies made by other state departments and by eliminating the words —“any excess of its valuation over those computed by the said legal minimum standard and also,” and to relieve companies not using Select-and-Ultimate valuation from unnecessary labor and expense.—Ed.

Note.—The amendment by L. 1910, chap. 616, provided that the legal minimum standard for the valuing of industrial policies should be based on the Standard or Sub-standard Industrial Mortality Table.—Ed.

An insurance company, originally organized as a fraternal organization, thereafter reorganized under the assessment plan and later as a stock company, maintains a sufficient reserve on the policies of former Class A when it provides that members of the former Class A should be assessed one dollar for each death, and that there should be set aside a fund of one dollar per 1,000 on all insurance issued on the new Class B, which fund should go to meet any deficit in assessments of Class A when the membership dropped below 1,000, and the mortuary fund was continued until the corporation organized as a stock company when it was discontinued, because no longer required, and when upon the last reorganization the company carried a reserve figured under § 84 of the Insurance Law, the reserve being applicable to all classes of policies. *Kelshaw v. Bankers' Life Insurance Co.*, 117 App. Div., 720.

In view of the change in this section omitting “any excess of its valuations over those computed by the said legal minimum standard and also,” it will not be necessary to prepare a valuation for 1913 on the “Select and Ultimate” basis. Ruling of Ins. Dept., July 8, 1913.

§ 85. When actual premium is less than net premium.

When the actual premium charged for an insurance by any life insurance corporation doing business in this state is less than the net premium for such insurance computed according to the table of mortality and rate of interest prescribed in this article, such corporation shall be charged as a separate liability with the value of an annuity, the amount of which shall equal the difference between such premiums and the term of which in years shall equal the number of future annual payments due on such insurance at the date of the valuation.

Source.—Former § 85; originally revised from L. 1884, chap. 341, § 1.

§ 86. Assets and liabilities of life and casualty insurance corporations; method of computation; procedure in case of impairment; reserve.

1. In estimating the condition of any life insurance corporation, under the provisions of this chapter, or in any examination made by him, or by an examiner appointed by him, the superintendent shall allow as assets only such investments as are authorized by the laws of this state, and shall charge as liabilities, in addition to the capital stock, all outstanding indebtedness of the corporation, and the premium reserve on policies, and additions thereto in force computed according to the table of mortality and rate of interest prescribed in this article. Any assets or securities lawfully held or acquired for the satisfaction, reduction or guaranty of any indebtedness to the corporation shall be allowed as assets at their just value in the judgment of the superintendent, but the total assets invested and otherwise of every domestic life insurance corporation shall be held to be accumulations for the exclusive benefit of policy holders, and no payment to stockholders shall be made therefrom until all obligations to policy holders and creditors have been fully provided for, including the reserve required by section eighty-four of this chapter to be determined by the superintendent of insurance. Whenever it shall appear to the said superintendent from the statement of any life insurance corporation made to the insurance department, or from an examination of the affairs of any such corporation, if a stock corporation, that its capital stock is impaired to the extent of fifty per centum thereof upon the basis of such reserve liability for policies and annuities in force as may be the standard used within this state at the time of ascertaining such impairment, it shall be the duty of said superintendent, if the corporation is organized under the laws of any other state or country, to revoke the certificate of authority issued to the agent or agents of such corporation, and cause a notice thereof to be published in the state paper for four weeks, and the agent or agents of such corporation are, after such notice, required to discontinue the issuing of any new policies. If the corporation so impaired is organized under the laws of this state, it shall be the duty of said superintendent to direct the officers thereof to require the stockholders to make

good in cash the amount of such deficiency within ninety days after the date of his requisition. And upon the failure of the stockholders to make good such deficiency within the time specified in such requisition, the corporation shall then be subject to the provisions of section twenty-one of this chapter. Provided that any corporation organized under the laws of this state, whose capital is impaired as above fifty per centum, may by a vote of a majority of its directors at a meeting called for that purpose reduce its capital stock to an amount not less than one hundred thousand dollars; and the said directors are hereby empowered to issue new certificates of stock to the stockholders for the amount of the reduced capital, and require in return all certificates previously issued.

2. In estimating the condition of any casualty insurance corporation, under the provisions of this chapter, the superintendent shall allow as assets only such investments as are authorized by the existing laws of this state, at the date of its investigation; and shall charge as liabilities, in addition to the capital stock, all outstanding indebtedness of the corporation, and the premium reserve on policies in force, equal to the unearned portions of the gross premiums charged for covering the risks, computed on each respective risk from the date of the issuance of the policy. The indebtedness for outstanding losses under insurance against loss or damage resulting from accident to or injuries suffered by an employee or other person and for which the insured is liable, and under insurance against loss from liability on account of the death of or injury to an employee not caused by the negligence of the employer, shall be determined as follows: Each corporation which writes policies covering any of the said kinds of insurance shall include in the annual statement required by section forty-four of this chapter a schedule of its experience thereunder, in the United States and foreign countries in the case of corporations organized in the United States, and in the United States only in the case of corporations organized outside of the United States, giving each calendar year's experience separately, and crediting or charging each item to the year in which the policy to which it relates was written, as follows: (1) the earned premiums on all such policies written during the period of

ten years immediately preceding the date as of which the statement is made, being the gross premiums on all such policies including excess and additional premiums and premiums in course of collection, less return premiums and premiums on canceled policies, and less the unearned premiums on policies in force as shown in such annual statement; (2) the amount of all payments of whatsoever nature made by reason or on account of injuries covered by such policies written during said period. This amount shall include medical and surgical attendance, payments to claimants, legal expenses, salaries and expenses of investigators, adjusters, and field men, rents, stationery, telegraph and telephone charges, postage, salaries and expenses of office employees, home office expenses, and all other payments made on account of such injuries, whether such payments are allocated to specific claims or are unallocated; (3) the number of suits being defended at the date as of which the statement is made under policies written during said period, except suits in which liability is not dependent upon negligence of the insured, and a charge of seven hundred and fifty dollars for each suit; (4) the number of deaths for which the insured are liable without proof of negligence, covered by policies written during said period, and not paid for at the date as of which the statement is made and a charge of the amount necessary to pay for such deaths; (5) the number of unpaid claims at the date as of which the statement is made on account of nonfatal injuries for which the insured are liable without proof of negligence, covered by policies written during said period, and a charge equal to the present value of the estimated future payments; (6) the loss ratio determined from the foregoing as to each year separately using as the divisor the earned premiums shown in item (1) and as the dividend the amount of payments shown in item (2) plus the amounts charged in items (3), (4), and (5); (7) the number of suits being defended at the date as of which the statement is made under policies written more than ten years prior to such date, except suits in which liability is not dependent upon negligence of the insured; (8) the number of deaths for which the insured are liable without proof of negligence, covered by policies written more than ten years prior to the date as of which the statement is made, and not paid for at such date;

(9) the number of unpaid claims at the date as of which the statement is made on account of nonfatal injuries for which the insured are liable without proof of negligence, covered by policies written more than ten years prior to such date. All unallocated payments in item (2) made in a given calendar year subsequent to the first four years in which a corporation has been issuing such policies shall be distributed as follows: Thirty-five per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, ten per centum to the policies written in the second year preceding, ten per centum to the policies written in the third year preceding, and five per centum to the policies written in the fourth year preceding, and such payments made in the first four calendar years in which a corporation has been issuing such policies shall be distributed as follows: in the first calendar year one hundred per centum shall be charged to the policies written in that year, in the second calendar year fifty per centum shall be charged to policies written in that year and fifty per centum to the policies written in the preceding year, in the third calendar year forty per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, and twenty per centum to the policies written in the second year preceding, and in the fourth calendar year thirty-five per centum shall be charged to the policies written in that year, forty per centum to the policies written in the preceding year, fifteen per centum to the policies written in the second year preceding, and ten per centum to the policies written in the third year preceding, and a schedule showing such distribution shall be included in such annual statement. Each such corporation shall be charged with indebtedness for outstanding losses upon such policies determined as follows: (10) for all suits being defended under policies written more than ten years prior to the date as of which the statement is made, except suits in which liability is not dependent upon negligence of the insured, one thousand dollars for each suit; (11) for all suits being defended under policies written more than five years and less than ten years prior to the date as of which the statement is made, except suits in which liability is not dependent upon negligence of the insured, seven hundred and

fifty dollars for each suit; (12) for all deaths for which the insured are liable without proof of negligence, covered by policies written more than five years prior to the date as of which the statement is made, the amount necessary to pay for such deaths; (13) for all unpaid claims on account of nonfatal injuries for which the insured are liable without proof of negligence under policies written more than five years prior to the date as of which the statement is made, the present value of the estimated future payments; (14) for the policies written in the five years immediately preceding the date as of which the statement is made an amount determined as follows: Multiply the earned premiums of each of such five years as shown in item (1) by the loss ratio ascertained as in item (6) on all the policies written in the first five years of the said ten-year period using as the divisor the sum of the earned premiums shown in item (1) for such first five years, and as the dividend the sum of the payments shown in item (2) for such first five years plus the sum of the charges in items (3), (4) and (5) for such first five years, but the ratio to be used shall in no event be less than fifty per centum at and after December thirty-first, nineteen hundred and eleven, nor less than fifty-one per centum at and after December thirty-first, nineteen hundred and twelve, nor less than fifty-two per centum at and after December thirty-first, nineteen hundred and thirteen, nor less than fifty-three per centum at and after December thirty-first, nineteen hundred and fourteen, nor less than fifty-four per centum at and after December thirty-first, nineteen hundred and fifteen, nor less than fifty-five per centum at and after December thirty-first, nineteen hundred and sixteen, and from the amount so ascertained in each of the last five years of said ten-year period deduct all payments made under policies written in the corresponding year as shown in item (2), and the remainder in the case of each year shall be deemed the indebtedness for that year, provided, however, that if the remainder in the case of any year of the first three years of the five years immediately preceding the date as of which the statement is made shall be less than the sum of the three following items for that year at that date — (a) the number of suits, except suits in which liability is not dependent upon negligence of the insured, being defended under policies written in that year and

a charge of seven hundred and fifty dollars for each suit, (b) the amount necessary to pay for all deaths for which the insured are liable without proof of negligence, covered by policies written in that year, and (c) the present value of estimated unpaid claims on account of nonfatal injuries for which the insured are liable without proof of negligence, covered by policies written in that year — then the sum of said items (a), (b) and (c) shall be the indebtedness for that year. A corporation which has been issuing such policies for a period of less than ten years shall nevertheless include in its annual statement, a schedule as hereinbefore required for the years in which it shall have issued such policies, and shall be charged with an indebtedness determined in the same manner, but in determining the indebtedness for policies written in the five years immediately preceding the date as of which the statement is made, the minimum ratio hereinbefore prescribed shall be used subject to the same deductions and provisions as in the case of corporations that have been issuing such policies for ten years or more.

Source.—Former § 86, as amended by L. 1901, chap. 514; L. 1903, chap. 566; L. 1904, chap. 486; L. 1905, chap. 113; originally revised from L. 1853, chap. 463, § 17, as amended by L. 1879, chap. 161.

Amended by L. 1911, chap. 183, and L. 1913, chap. 304.

Note.—The purpose of the amendment of this section by chapter 304 of 1913 was to eliminate a previous ambiguity regarding allowance of assets in the examination of a life company.—Ed.

REAL ESTATE.—Investments may be made in real estate mortgages of another state under § 16 by an insurance company of this state which reinsures the risks held by a company of that state. Attorney-General Rep., 1896, page 145.

VALUATION.—When an insurance company originally organized as a fraternal organization has thereafter successively incorporated as a mutual company and as a stock company, under chapter 690 of the Laws of 1893, the valuation of policies issued when the corporation was a mutual company for the purpose of ascertaining the amount of reserve, should be made under § 52 of the Insurance Law, if such valuation does not violate any provision, express or implied, of the original contract of insurance; the reserve need not be determined by valuing such policies as whole life policies under § 86 of the Insurance Law. *Elder v. Bankers' Life Insurance Co.*, 117 App. Div., 722.

Liquor tax certificates are issued as of October first in each year, and persons taking out such liquor tax certificates file surety company bonds for the year. The financial statements of surety companies uniting in such bonds should carry as unearned premium reserve for such bonds seventy-five per cent of the premium receipts, such financial statements dating as of December thirty-first, and, therefore, at the date of such financial statement, such bonds would have been in existence three months. Chapter 720 of Laws 1893 does

not expressly repeal or amend the provisions of section 86 of chapter 690 of Laws 1892, which has been re-enacted and amended in the years 1901, 1903, 1904 and 1905. Thus it may be assumed that the legislature intended both statutes to remain in force, and it is therefore desirable to so construe them that both may be given effect. Attorney-General's Opinion, December 14, 1908.

The stockholders of a domestic life insurance company cannot be held for an amount exceeding the sum collected or collectible from the stockholders, upon their stock subscriptions. There is a provision of the Insurance Law relating to the duty of the superintendent in case a stock life insurance corporation becomes impaired; the superintendent must direct the officers to require the stockholders to make good the deficiency within ninety days; upon their failure to do so, the corporation may be proceeded against as an insolvent corporation. Ruling of Ins. Dept., Feb. 27, 1915.

Section 86 (reserve requirements) is applicable to corporations organized under section 70, subd. 9. Attorney-General Rep., July 13, 1905.

§ 87. Contingency reserve.

Any domestic life insurance corporation may accumulate and maintain in addition to an amount equal to the net values of its policies computed according to the standard adopted by it under section eighty-four of this chapter a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; one-half of one per centum for each additional two million five hundred thousand dollars up to twenty million dollars; one-fourth of one per centum for each additional five million dollars up to fifty million dollars; and if said net values equal or exceed the last mentioned amount, the contingency reserve shall not exceed seven and one-half per centum thereof; provided that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the

maximum percentage. Provided however that nothing herein contained shall be construed to affect any existing surplus or contingency reserves held by any such corporation save that whenever the existing surplus and contingency reserves, exclusive of said net values and of all accumulations held on account of existing deferred dividend policies or groups of such policies, shall exceed the limit above mentioned it shall not be entitled to maintain any additional contingency reserve. Provided further that for cause shown the superintendent of insurance may at any time and from time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned for a prescribed period, not exceeding one year under any one permission, by filing in his office a decision stating his reasons therefor and causing the same to be published in his next annual report. This section shall not apply to any corporation doing exclusively a non-participating business.

Source.—Former § 87, as added by L. 1906, chap. 326.

Amended by L. 1916, chap. 119. In effect April 3, 1916.

See § 83, ante. Distribution of surplus to policyholders.

See § 664, Penal Law. Misconduct of directors of monied corporations as to loans, etc.

See § 28, Stock Corporation Law, chap. 61 of 1909. Liability of directors for making unauthorized dividends.

The provisions of section 87, relating to the limitation of the contingency reserve of any domestic life insurance corporation, do not apply to life insurance corporations incorporated under the laws of other states. Ruling Ins. Dept., April 29, 1913.

The contingency reserve provisions of this section are not applicable to foreign life companies. Ruling Ins. Dept., April 29, 1913.

An insurance company may lawfully issue a policy containing a clause "upon default of payment of premium this policy will be binding upon the company as participating paid-up insurance of reduced amount, payable at the same time and on the same conditions as under the original contract." Ruling Ins. Dept., Aug. 16, 1910.

§ 88. Surrender value of lapsed or forfeited policies.

Whenever any policy of life insurance issued after January first, eighteen hundred and eighty, and before January first nineteen hundred and seven, by any domestic life insurance corporation after being in force three full years, shall, by its terms, lapse or become forfeited for the non-payment of any premium or any note given for a premium or loan made in cash on such policy

as security, or of any interest on such note or loan, the reserve on such policy computed according to the American experience table of mortality at the rate of four and one-half per centum per annum shall, on demand made, with surrender of the policy within six months after such lapse or forfeiture, be taken as a single premium of life insurance at the published rates of the corporation at the time the policy was issued, and shall be applied, as shall have been agreed in the application or policy, either to continue the insurance of the policy in force at its full amount so long as such single premium will purchase temporary insurance for that amount, at the age of the insured at the time of lapse or forfeiture, or to purchase upon the same life at the same age paid up insurance payable at the same time and under the same conditions, except as to payments of premiums, as the original policy. If no such agreement be expressed in the application or policy, such single premium may be applied in either of the modes above specified at the option of the owner of the policy, notice of such option to be contained in the demand hereinbefore required to be made to prevent the forfeiture of the policy.

The reserve hereinbefore specified shall include dividend additions calculated at the date of the failure to make any of the payments above described according to the American experience table of mortality with interest at the rate of four and one-half per centum per annum after deducting any indebtedness of the insured on account of any annual or semi-annual or quarterly premium then due, and any loan made in cash on such policy, evidence of which is acknowledged by the insured in writing.

The net value of the insurance given for such single premium under this section, computed by the standard of this state, shall in no case be less than two-thirds of the entire reserve computed according to the rule prescribed in this section after deducting the indebtedness as specified; but such insurance shall not participate in the profits of the corporation.

If the reserve upon any endowment policy applied according to the provisions of this section as a single premium of temporary insurance be more than sufficient to continue the insurance to the end of the endowment term named in the policy, and if the insured survive that term, the excess shall be paid in cash at the

end of such term, on the conditions on which the original policy was issued.

This section shall not apply to any case of a policy issued before January first, nineteen hundred and seven, where the provisions of the section are specifically waived in the application and notice of such waiver is written or printed in red ink on the margin of the face of the policy when issued. If any policy of life insurance (other than a term policy for twenty years or less), issued on or after January first, nineteen hundred and seven, by any domestic life insurance corporation, after being in force three full years shall by its terms lapse or become forfeited by the nonpayment of any premium or any note therefor or any loan on such policy or of any interest on such note or loan, the reserve on such policy computed according to the standard adopted by said company in accordance with section eighty-four of this chapter, together with the value of any dividend additions upon said policy, after deducting any indebtedness to the company and one-fifth of the said entire reserve, or the sum of two and fifty one-hundredths dollars for each one hundred dollars of the face of said policy if said sum shall be more than the said one-fifth, shall upon demand not later than three months after the date of lapse with surrender of the policy be applied as a surrender value as agreed upon in the policy, provided that if no other option expressed in the policy be availed of by the owner thereof, and if the policy itself does not direct what option shall become operative in default of selection by the owner, the same shall be applied to continue the insurance in force at its full amount including any outstanding dividend additions less any outstanding indebtedness on the policy but without future participation and without the right to loans, so long as such surrender value will purchase nonparticipating temporary insurance at net single premium rates by the standard adopted by the company, at the age of the insured at the time of lapse or forfeiture, provided in case of any endowment policy if the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in the policy, the excess shall be used to purchase in the same manner pure endowment insurance payable at the end of the

endowment term named in the policy on the conditions on which the original policy was issued, and provided further that any attempted waiver of the provisions of this paragraph in any application, policy or otherwise, shall be void, and provided further that any value allowed in lieu thereof shall be at least equal to the net value of the temporary insurance or of the temporary and pure endowment insurance herein provided for. The term of temporary insurance herein provided for shall include the period of grace, if any. In every case where a contract provides for both insurance and annuities, the foregoing provisions shall apply only to that part of the contract which provides for insurance, but every such contract containing a provision for a deferred annuity on the life of the insured only (unless paid for by a single premium) shall provide that in the event of the nonpayment of any premium after three full years' premiums shall have been paid, the annuity shall automatically become converted into a paid-up annuity for such a proportion of the original annuity as the number of completed years' premiums paid bears to the total number of premiums required under the contract.

Source.—Former § 88, as amended by L. 1906, chap. 326; originally revised from L. 1879, chap. 347, §§ 1, 2.

Amended by L. 1909, chap. 301; L. 1909, chap. 595 and L. 1910, chap. 614.

FORFEITURE.—The rule that a strict construction is to be given to a provision of forfeiture in a policy of insurance, and that it may not be extended for the purpose of working a forfeiture beyond the strict and literal meaning of the words used, applies only where the meaning is doubtful and the words capable of two constructions; where the language is plain and unequivocal and the meaning not in doubt, in the absence of fraud or mistake, the contract must be enforced as it reads. *Holly v. Metropolitan Life Ins. Co.*, 105 N. Y., 437.

Where it is expressly provided that the premium on a life insurance policy shall be paid on or before a certain day, and in default thereof the policy shall be void, that the non-payment of the premium upon the day named works a forfeiture. *Fowler v. Metropolitan L. Ins. Co.*, 116 N. Y. 389.

One holding a policy of life insurance does not forfeit his policy by omitting to pay annual premiums thereon after the company issuing the policy has ceased to do business, transferred all of its assets and become insolvent. *People v. Empire Mut. Life Ins. Co.*, 92 N. Y., 105.

Where the defendant in its answer alleges a forfeiture of the policy by reason of the non-payment of a single specified premium, it cannot, upon the trial, assert a forfeiture because of the non-payment of subsequent premiums. *Meeder v. Provident Sav. Soc.*, 58 App. Div., 80.

A paid-up policy may only be demanded within six months after default, and if the time has been extended by any act or omission of the company,

that fact should be pleaded as one essential to the plaintiff's right to the relief sought. *Stayner v. Equitable L. Assur. Soc.*, 22 Misc., 53.

Where a policy of insurance contains a provision that if it should become void, after the payment of the premiums for three years, because of a default in the payment of any subsequent premium, the insurer would issue in lieu thereof, a new paid-up policy, "provided that said policy shall be surrendered duly receipted within six months of the date of default in payment of premium on said policy," the fact that the policy sought to be exchanged had been stolen, and that it is impossible for the policyholder to surrender the identical instrument, does not excuse him from his duty to deliver to the insurer a sufficient surrender of the policy and a sufficient receipt of all liability thereon. *Wilcox v. Equitable L. Assur. Soc.*, 55 App. Div. 529.

§ 88 permits parties to a life insurance contract to agree in the application or in the policy itself, in the event of a lapse for non-payment of a premium, either to the continuance of the policy at its full amount so long as such single premium will purchase temporary insurance, or to the issuance of a policy of paid-up insurance. It is only when no such agreement is expressed in the application or policy that a choice of the modes specified in the statute is available to the insured. *Warren v. Postal Life Insurance Co.*, 163 App. Div., 638.

After a new policy is issued, the insured has no further right or claim under the old policy, and whatever claim he has, he must base upon the new policy. *Matter of Attorney-General v. Continental Ins. Co.*, 91 N. Y., 647.

The provisions of the statutes of New York relative to forfeiture of policies by insurance companies doing business therein, for nonpayment of premiums or interest, does not control policies issued by a New York corporation in another State to residents of that state. *Mut. Life Ins. Co. of New York v. Cohen*, 179 U. S., 262.

Where an insurance company doing business within a state issues its policies to residents of that state, the validity of clauses in its policies must be determined by the laws of that state. *Price v. Conn. Mut. Life Ins. Co.*, 48 Mo. App., 281; *Equitable Life Society v. Clements*, 140 U. S., 226.

As § 88 provides in substance that if a premium be not paid when due, the insured is entitled to have his policy extended for the full amount from the date it lapses for such time as the reserve on the policy taken as a single premium at the age of the insured at the time of forfeiture would purchase temporary insurance, after deducting any indebtedness of the insured on account of premiums due, the beneficiary of one holding a policy containing a similar provision inserted pursuant to said statute is entitled to recover the full amount of the policy on the death of the insured where, having been unable to pay the full amount of a certain premium, he gave the insurance company a six months' note for the balance, which was accepted by it as payment of the premium and on maturity of the note, made another part payment, giving a similar note for the balance, even though the latter note was not paid when due, if in fact at the death of the insured the difference between the part payments and the amount of the second note was sufficient to purchase continuing insurance for a period extending beyond the death of the insured. *Taylor v. New York Life Insurance Co.*, 148 App. Div., 815.

An insured paid premiums on his policy for three years and gave a note the fourth year. and thereafter wholly defaulted; the insurer rightfully deducted

the amount due on the note in computing the time for which the insured was entitled to continued insurance, and as such period expired before his death the personal representatives are entitled to nothing. *Taylor v. New York Life Ins. Co.*, 197 N. Y., 324; rev'g 131 App. Div., 922.

A life insurance company which accepts a premium note under an agreement that the policy shall become void if the note is not paid, after having given notice of the date when the premium became due, is not obliged to give a similar notice respecting the maturity of the note in order to declare a forfeiture of the policy; where an insured dies within six months after his policy lapsed, the beneficiary is entitled to the protection of § 88 of the Insurance Law, which provides for the continuation of the policy for such period of insurance as may be purchased by any reserve without making the demand mentioned in said law, or exercising the option to continue the policy; a demand and the exercise of the option provided for by the policy is necessary only where the insured lives for the six months following the forfeiture. *Bartholomew v. Security Mutual Life Insurance Co.*, 140 App. Div., 88.

Cash surrender values may be included in policy contracts. Ruling Ins. Dept., July 9, 1906.

Cash payments on surrender not mandatory on company; policy controls. Ruling Ins. Dept., July 27, 1914.

Surrender values described in law are minimum values and larger values may be allowed. Ruling Ins. Dept., July 26, 1906.

The amendments as to surrender values do not apply to foreign life insurance companies. Ruling Ins. Dept., June 14, 1906.

The options granted the insured under this section for the period of six months may be exercised by the insured during his life and by the beneficiary after the death of the insured, if any part of said six months has not expired. *Bartholomew v. Security Mut. Life Ins. Co.*, 204 N. Y., 649.

§ 89. Discriminations prohibited.

No life insurance corporation doing business in this state shall make or permit any discrimination between individuals of the same class or of equal expectation of life, in the amount or payment or return of premiums or rates charged for policies of insurance, or in the dividends or other benefits payable thereon, or in any of the terms and conditions of the policy; nor shall any such company permit or agent thereof offer or make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon; nor shall any such company or any officer, agent, solicitor or representative thereof pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducement to any person to insure, or give, sell or purchase, or offer to give, sell or purchase as such inducement or in connection with such insurance, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits accruing

thereon, or any valuable consideration or inducement whatever not specified in the policy, nor shall any person knowingly receive as such inducement, any rebate of premium, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever, not specified in the policy. No person shall be excused from attending and testifying or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding. No premium upon any policy of life insurance issued on or after January first, nineteen hundred and seven, shall be charged for term insurance for one year, higher in amount than the premium for term insurance for one year at the same age under any other form of policy issued by such corporation; provided, that nothing in this chapter shall be so construed as to forbid a company, transacting industrial insurance on a weekly payment plan, from returning to policyholders, who have made premium payments for a period of at least one year, directly to the company at its home or district offices, a percentage of the premium which the company would have paid for the weekly collection of such premium.

Source.—Former § 89; originally revised from L. 1889, chap. 228, § 1, as amended by L. 1890, chap. 401.

Amended by L. 1911, chap. 249.

Note.—The amendment by L. 1911, chap. 249, provided that nothing in the Insurance Law shall prevent an industrial insurance company on a weekly payment plan from returning to policyholders who have made premium payments for a period of at least one year direct to the company, the part of the premium which the company would have paid for weekly collections.—Ed.

See § 1191, Penal Law. Discriminations and rebates by life insurance companies prohibited.

Section 89 is not limited to the issues in this state of a life insurance corporation doing business in this state. Ruling Ins. Dept., Nov. 16, 1909.

For the purposes of § 89 annuities are to be considered as insurance. Ruling Ins. Dept., May 1, 1912.

LOTTERY.—An insurance company cannot issue policies payable in an order to be determined by lot. Attorney-General Rep., 1892, page 231.

Chap. 282 of 1889, from which this section is in part derived, was held to be constitutional. *People v. Formosa*, 131 N. Y., 478.

COMMISSION.—A firm of brokers may place life insurance on a member who is entitled to share in the commission as a general firm profit. Ruling Ins. Dept., Jan. 2, 1912.

A corporation may accept commissions earned by members. Ruling Ins. Dept., July 1, 1913.

Payment of commissions to sub-agents for the purpose of remitting the cost of insurance constitutes a rebate. Ruling Ins. Dept., August 4, 1908.

The acceptance of less than the face amount of a note in payment of a premium constitutes a rebate. Ruling Ins. Dept., Dec. 17, 1914.

Where it is found that an agent is clearly violating the law prohibiting discrimination he will be proceeded against. Ruling Ins. Dept., June 16, 1911.

The payment of a commission to an agent on a policy on his own life written by a company not represented by him is prohibited. Ruling Ins. Dept., July 8, 1913.

An officer of an insurance company may insure his own life in his company, if no rebate is granted or commission paid. Ruling Ins. Dept., Dec. 3, 1906.

A bona fide agent taking out a policy of insurance on his own life in good faith is entitled to commissions thereon. Ruling Ins. Dept., Nov. 22, 1909.

A general agent may not legally appoint as agent a man in another line of business, at the same time write his application for insurance, apply for state license, and allow the applicant and prospective agent the full first year commission on his policy. Ruling Ins. Dept., January 18, 1909.

The object of § 89 is to require life insurance companies to give equal terms to be fixed in the policies to insurers of the same class, and to give special favor to no one, and its operation is directly against considerations and inducements to a contract of insurance which are not specified in the policy. *McGee v. Felter*, 75 Misc., 349.

REBATE.—A note accepted in payment of a life insurance policy without the legal interest charge is equivalent to a rebate. Ruling Ins. Dept., May 28, 1909.

Any arrangement whereby the policyholder does not pay the full amount of the premium, as set forth in the policy, is a rebate within the meaning of the law. Ruling Ins. Dept., April 7, 1915.

The act of an authorized agent to send circular letters to members of a church and solicit insurance on the condition that part of his commissions will be turned back to the church is a violation of the spirit if not the letter of § 89. Ruling Ins. Dept., Oct. 24, 1910.

It would be a violation of § 89 either (1) for a life insurance agent to sell a policy of life insurance to a person at the rate stipulated by the company and to collect the entire premium and in addition to give without cost a building lot valued at \$50 or (2) to sell a policy and to sell such lot for the nominal charge of \$1.00. Ruling Ins. Dept., June 30, 1910.

Interest collectible on premiums after the expiration of the grace period. Ruling Ins. Dept., April 7, 1914.

An agent may not buy stock of insured's corporation in consideration of his taking out a life policy. Ruling Ins. Dept., Oct. 14, 1911.

A reduction of premium guaranteed in a policy of insurance does not constitute a rebate. Ruling Ins. Dept., Dec. 9, 1911.

A policyholder who pays and an agent who receives less than the full amount of the premium is guilty of a misdemeanor. Ruling Ins. Dept., April 7, 1915.

A life company which does business direct with policyholders through the mail may provide in the contract for a reduction of premiums. Ruling Ins. Dept., Dec. 18, 1911.

The dating back of a life insurance policy is prohibited by the provisions of section 89. Ruling Ins. Dept., Feb. 21, 1910.

The giving of a new policy at the old rate of five years previous is a discrimination. Ruling Ins. Dept., Sept. 9, 1910.

The antedating of a substituted policy without increase in premium is not a discrimination. Ruling Ins. Dept., May 12, 1910.

There is no law that specifically prohibits the antedating of a policy. Ruling Ins. Dept., July 10, 1911.

This section does not provide a specific penalty for giving rebate which should be considered exclusive, but simply provides the manner in which the Superintendent of Insurance may restrain future disobedience. *Equitable Trust Co. v. Newman*, 72 Misc., 52.

A reduction in the rate of premiums charged by a company is not a rebate, so long as it applies to all applicants for insurance; the prohibition of section 89 is against discriminations. Ruling Ins. Dept., May 9, 1911.

It is not a violation of this section for a life insurance agent, in writing a new policy, to advance and pay to the insuring company out of his own funds, the full first year premium when he delivers the policy to the insured—taking in exchange therefor a three months note of the insured, to the agent individually, for the full amount advanced with interest—the same being done in good faith and without any qualifying agreement. Ruling Ins. Dept., March 15, 1912.

If a person on a salary such as a clerk or Supervisor of Agents is allowed a commission on a policy on his own life, it is a rebate unless the commission is determined in advance and that if it will exceed \$5,000 for any one year, the contract for such commission is passed upon by the board of directors. Ruling of Ins. Dept., December 11, 1913.

DATING BACK.—A new policy may be issued in place of one allowed to lapse and may be dated back as many years as premiums were paid on the original policy. Ruling Ins. Dept., May 19, 1910.

Dating back of a policy, to give the insured the benefit of a younger age, is clearly discriminating and falls within the prohibition of § 89. Ruling Ins. Dept., Oct. 27, 1909.

Section 89 does not prohibit dating back absolutely but does prohibit discriminations. Ruling Ins. Dept., Nov. 11, 1909.

If A should now apply to Company B for the cancellation of his five-year old policy, and the issue of a new one in lieu thereof on the company's new form with same date of entry as the old policy, and the company should grant his request and give him the new policy on the new form at age 40, at the old date of five years ago, it would be a violation of § 89. Ruling Ins. Dept., Sept. 9, 1910.

SPECIAL CONTRACTS.—"Special contracts," frequently described as "board contracts," are prohibited by section 89 of the Insurance Law as amended by Laws 1906, chapter 326. Ruling Ins. Dept., November 6, 1908.

The employment of a person for the bona fide purpose of procuring prospects would not in itself be a violation of § 89. Ruling Ins. Dept., Jan. 4, 1910.

INTEREST ON CHECKS.—In regard to requiring interest on checks tendered in payment of premiums with a request that they be held, Insurance Companies should be governed by the terms of the grace clause contained in the policy on which a premium is to be paid. Ruling of Ins. Dept., April 7, 1914.

The giving of tickets or chances upon a building lot to purchasers of insurance constitutes a rebate. Ruling Ins. Dept., June 24, 1913.

The gift of a gold wedding ring to prospective policyholders constitutes a discrimination. Ruling Ins. Dept., May 6, 1915.

Renewable term rates may be used for non-renewable term insurance on impaired lives. Ruling Ins. Dept., May 20, 1907.

DISCRIMINATIONS.—The word "class" means a number of persons having characteristics in common as occupation, education and habits of life. Ruling Ins. Dept., April 26, 1907.

Writing lives of bank officials and employees as a class at a lower premium falls within the prohibition of the section. Ruling Ins. Dept., May 20, 1907.

The new \$5,000 ordinary life policy of the Metropolitan Life Insurance Company does not violate the provisions of this section. Ruling Ins. Dept., July 19, 1909.

Discriminations in cash surrender values and paid-up insurance on lapsed policies is within the prohibition of this section. Ruling Ins. Dept., July 27, 1909.

The failure to state the rate of interest on premiums for period of grace may result in discrimination. Ruling Ins. Dept., Aug. 7, 1909.

There is no discrimination where the reserve value of a small paid-up policy is applied towards purchase of new insurance. Ruling Ins. Dept., Sept. 1, 1909.

Where a privilege is offered to every applicant there is no discrimination. Ruling Ins. Dept., Dec. 12, 1910.

Annual premium policies may not be paid for in monthly installments. Ruling Ins. Dept., Sept. 25, 1912.

A plan to insure twelve or fourteen members of a trust company at a lower premium is not a rebate, but in the nature of group insurance. Ruling Ins. Dept., Dec. 6, 1912.

The consideration must be expressed in the policy contract. Ruling Ins. Dept., April 15, 1913.

§ 90. Discriminations against colored persons prohibited.

No life insurance corporation doing business within this state shall make any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons, or in any other manner whatever; nor shall any such corporation demand or require a greater premium from such colored persons than is at that time required by such corporation from white persons of the same age, sex, general condition of health and prospect of longevity; nor shall any such corporation make or require any rebate, diminution or discount upon the amount to be paid on such policy in case of the death of such colored persons insured, nor insert in the policy any condition, nor make any stipulation whereby such person insured shall bind himself, or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases; and any such stipulation or condition so made or inserted shall be void.

Source.—Former § 90; originally revised from L. 1891, chap. 119, § 1.

See § 1191, Penal Law. Discriminations and rebates by life insurance corporations prohibited.

Life insurance corporations doing business within this state are not permitted to make any discrimination against "persons wholly or partly of African descent." Ruling Ins. Dept., Sept. 22, 1914.

§ 91. Business to be accepted from licensed agents only; agents' certificate of authority.

No life insurance corporation doing business within this state, or agent thereof, shall pay any commission or other compensation to any person for services in obtaining new insurance, unless such person shall have first procured from the superintendent of insurance a certificate of authority to act as an agent of such company as hereinafter provided. No person shall act as agent, sub-agent or broker, in the solicitation or procurement of applications for insurance, or receive for services in obtaining new insurance any commission or other compensation from any life insurance corporation doing business in this state, or agent thereof, without first procuring a certificate of authority so to act from the superintendent of insurance, which must be renewed annually on the first

day of January, or within six months thereafter. Such certificate shall be issued by the superintendent of insurance only upon the written application of persons desiring such authority, such application being approved and countersigned by the company such person desires to represent, and shall be upon a form approved by the superintendent of insurance, giving such information as he may require. The superintendent of insurance shall have the right to refuse to issue or renew any such certificate in his discretion. No such certificate shall be valid, however, in any event after the first day of July of the year following the issuing of such certificate. Renewal certificates may be issued upon the application of the company. Such certificate of authority shall be executed in triplicate; one copy thereof shall be filed in the office of the superintendent, and two copies thereof shall be issued to such agent, subagent or broker, one of which copies such agent, subagent or broker shall, within thirty days after such certificate is issued, cause to be filed in the office of the county clerk of the county in which such agent, subagent or broker resides, or, if a non-resident, in the office of the county clerk of the county in this state in which he has an office for the transaction of business. Agents operating solely for companies transacting industrial or prudential insurance on the weekly-payment plan of insurance are exempted from the provisions of this section, and nothing contained herein shall be construed as prohibiting any corporation transacting industrial or prudential insurance on the weekly-payment plan from accepting business on the plan from unlicensed agents. Any person or corporation violating the provisions of this section shall forfeit to the state the sum of five hundred dollars. On the conviction of any person acting as agent, subagent or broker, of the commission of any act which is a violation of any of the provisions of this chapter the superintendent of insurance shall immediately revoke the certificate of authority issued to him and no such certificate shall thereafter be issued to such convicted person by the superintendent within three years from the date of his conviction.

Source.—Former § 91, as amended by L. 1895, chap. 995; L. 1907, chap. 623; originally revised from L. 1851, chap. 95, § 3; L. 1889, chap. 282, §§ 1, 2, as amended by L. 1890, chap. 401.

Amended by L. 1909, chap. 301.

Note.—The amendment by L. 1909, chap. 301, clarified the provisions of the section which exempted agents doing industrial insurance on the weekly plan from the provisions of the section by providing that corporations doing such business may accept business from unlicensed agents who are operating to sell that kind of insurance only.—Ed.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter of verified statement to be filed in the office of superintendent of insurance.

See § 31, ante. Agent not to transact business until certificate is filed in county clerk's office.

See § 32, ante. Renewal of certificate.

See § 49, ante. Any person aiding in the transaction of business of foreign corporation is deemed an agent thereof.

See § 50, ante. Agent's certificate of authority.

See § 54, ante. Agents not to act for unauthorized corporations.

See § 137, post. License to agents in certain cases.

See § 1192, Penal Law. Acting as agent of life insurance corporation without certificate of authority.

CONSTITUTIONAL.—Section 91 which provides in substance that no life insurance company shall pay a commission unless the agent has procured authority to act as agent and that such authority shall be issued by the superintendent of insurance upon a form approved by him and that said superintendent may "refuse to issue or renew such certificate in his discretion" is not unconstitutional on the theory that it vests the superintendent with arbitrary power to prevent a person from pursuing a lawful calling; the section may be construed to mean that the superintendent is clothed with power to determine whether an applicant has complied with the statute and said construction, which renders the statute constitutional, will be adopted. *Stern v. Metropolitan Life Insurance Co.*, 169 App. Div., 217; *aff'd* 217 N. Y. (Mem.).

AGENT'S AUTHORITY.—It was apparently the legislative intent that agents soliciting insurance, other than industrial or prudential on the weekly payment plan, should secure a certificate of authority therefor from the superintendent of insurance. *Attorney-General Rep.*, 1897, page 207.

The payment by a company of a commission on account of business secured in the State, to a manager, who does not hold a New York life agent's certificate of authority, and who does not participate in any way in securing the application for insurance, is a violation of this section. *Ruling Ins. Dept.*, Feb. 17, 1912.

Agents of life insurance club on neighborhood plan must procure certificates of authority. *Attorney-General Rep.*, March 10, 1904.

Field canvassers and office help obtaining birthdays and insurance information must be licensed agents. *Ruling Ins. Dept.*, June 23, 1909.

Any unauthorized company may place insurance on life of a citizen provided the contract is made direct with the company. *Ruling Ins. Dept.*, Sept. 21, 1911.

An actuary acting as adviser must have agent's certificate. *Ruling Ins. Dept.*, Oct. 1, 1912.

Each of the persons composing a firm must make individual application to be licensed as life agents. *Ruling Ins. Dept.*, June 18, 1913.

ANNUITIES.—Annuities may be issued without the services of a licensed agent on the application of any person interested so long as no commission is allowed for the consideration received. Ruling Ins. Dept., July 29, 1909.

There is no prohibition in the Insurance Law against an insurance company or other corporation authorized to do an annuity business from paying commissions or compensation for such business to persons not licensed. Ruling Ins. Dept., March 7, 1912.

COMMISSION.—A person cannot accept lawfully commission on a life insurance policy on his own life which is written by a company which he does not represent. Ruling Ins. Dept., July 8, 1913.

If the contracts of the members of a corporation with the corporation provide for the turning in of commissions on life business produced, there is no reason why such commissions on such business may not be turned over to such corporation, provided, however, that this would not apply to business written on the life of any member of the corporation. Ruling Ins. Dept., July 1, 1913.

A licensed agent may not share commissions with a non-resident agent who does not hold a license. Ruling Ins. Dept., Oct. 25, 1911.

A New York agent may not share commissions with a non-licensed foreign agent procuring prospects. Ruling Ins. Dept., Nov. 25, 1912.

A life agent may not share commissions with a broker licensed under section 143. Ruling Ins. Dept., Oct. 3, 1914.

An agent may not share commissions with the insured. Ruling Ins. Dept., Dec. 29, 1914.

The superintendent has discretionary power to issue or refuse to issue a license to an agent. Ruling Ins. Dept., April 18, 1910.

§ 91-a. Agents for health or accident insurance.

No corporation transacting the business of health and accident insurance within this state, or agent thereof, shall pay any commission or other compensation to any person, partnership, association or corporation, except to a broker duly authorized under the provisions of section one hundred and forty-three of this chapter, for services in obtaining new insurance or in collecting premiums from policyholders in this state, unless such person, partnership, association or corporation shall have first procured from the superintendent of insurance a certificate of authority to act as an agent of such corporation as hereinafter provided. No person, partnership, association or corporation shall act as agent in the solicitation or procurement in this state of applications for health and accident insurance or in the collection of premiums for such insurance, or receive for such services any commission or other

compensation from any corporation transacting the business of health and accident insurance in this state, or agent thereof, without first procuring a certificate of authority so to act from the superintendent of insurance which must be renewed annually.

Before any agent's certificate of authority shall be issued by the superintendent of insurance pursuant to this section, there shall be filed in his office: (1) A written application by the person, partnership, association or corporation desiring such authority which shall be in the form or forms and supplements thereof prescribed by the superintendent of insurance and contain such information as he may require. (2) A certificate by the corporation desiring to employ the applicant as agent, duly verified by one of its executive officers or managing agents, that such corporation has duly investigated the character and record of the applicant and has satisfied itself that he is trustworthy and competent to act as its agent. The superintendent of insurance may refuse to issue or renew and may revoke any such certificate for cause, which shall include violations of the insurance law and fraudulent practices, provided that no such action shall be taken without an investigation and a hearing either before the superintendent or before a salaried employee of the insurance department designated for that purpose, whose report the superintendent may adopt. Every such corporation shall, upon the termination of the employment of any agent for the solicitation of health and accident insurance in this state or the collection of premiums therefor, forthwith file with the superintendent of insurance a statement of the facts relative to the employment of such agent and the termination of such employment and the cause thereof.

Every such certificate shall expire upon the termination of the employment of the agent by the corporation for which he is authorized to act as agent, or in any event, on the thirty-first day of December of the calendar year in which the same shall have been issued, provided, however, if an application for the renewal of any such certificate shall have been filed with the superintendent of insurance before January first of any year, such agent may continue to act as such under such expired certificate until the issuance to him by the superintendent of insur-

ance of a new certificate or until five days after the superintendent of insurance shall have refused to issue such certificate and shall have served notice of such refusal on such agent. Service of such notice may be made either personally or by mail, and, if by mail, shall be deemed complete if such notice is deposited in the post-office, postage prepaid, directed to the applicant at the place of residence or business specified in his application.

Added by L. 1914, chap. 14. In effect February 26, 1914.

Note.—Section 2 of chap. 14, L. 1914, further provides:

This act shall take effect on the first day of July, nineteen hundred and fourteen, provided that any person, partnership, association or corporation, acting as the agent in this state of any corporation transacting the business of health and accident insurance, who or which shall or may have procured a certificate of authority to act as agent of such corporation under and pursuant to the provisions of section one hundred and forty-two of this chapter prior to the said first day of July, nineteen hundred and fourteen, shall not be required to make application for a certificate of authority hereunder for the year nineteen hundred and fourteen, and that, if such agent, so authorized, shall apply for a certificate of authority to act as agent pursuant to this section prior to the first day of January, nineteen hundred and fifteen, such agent may continue to act as such under such expired certificate until the issuance to him or it by the superintendent of insurance of a certificate thereunder or until five days after the superintendent of insurance shall have refused to issue such certificate and shall have served notice of such refusal in the manner above provided.

§ 92. No forfeiture of policy without notice.

No life insurance corporation doing business in this state shall within one year after the default in payment of any premium, installment or interest declare forfeited, or lapsed, any policy hereafter issued or renewed, and not issued upon the payment of monthly or weekly premiums, or unless the same is a term insurance contract for one year or less, nor shall any such policy be forfeited, or lapsed, by reason of nonpayment when due of any premium, interest or installment or any portion thereof required by the terms of the policy to be paid, within one year from the failure to pay such premium, interest or installment, unless a written or printed notice stating the amount of such premium, interest, installment, or portion thereof, due on such policy, the place where it shall be paid, and the person to whom the same is payable, shall have been duly addressed and mailed to the person whose life is

insured, or the assignee of the policy, if notice of the assignment has been given to the corporation, at his last known post-office address in this state, postage paid by the corporation, or by any officer thereof, or person appointed by it to collect such premium, at least fifteen and not more than forty-five days prior to the day when the same is payable. The notice shall also state that unless such premium, interest, installment or portion thereof, then due, shall be paid to the corporation, or to the duly appointed agent or person authorized to collect such premium by or before the day it falls due, the policy and all payments thereon will become forfeited and void except as to the right to a surrender value or paid-up policy as in this chapter provided. If the payment demanded by such notice shall be made within its time limited therefor, it shall be taken to be in full compliance with the requirements of the policy in respect to the time of such payment; and no such policy shall in any case be forfeited or declared forfeited, or lapsed, until the expiration of thirty days after the mailing of such notice. The affidavit of any officer, clerk, or agent of the corporation, or of any one authorized to mail such notice that the notice required by this section, has been duly addressed and mailed by the corporation issuing such policy shall be presumptive evidence that such notice has been duly given. No action shall be maintained to recover under a forfeited policy, unless the same is instituted within two years from the day upon which default was made in paying the premium, installment, interest or portion thereof for which it is claimed that forfeiture ensued.

Source.—Former § 92, as amended by L. 1897, chap. 218, and L. 1906, chap. 326; originally revised from L. 1876, chap. 341, § 1, as amended by L. 1877, chap. 321, and § 2.

See § 210, post. Notice of assessment by co-operative companies.

See Personal Property Law, § 15, as amended by L. 1911, chap. 327, as to proceeds of life insurance policy under a trust with an insurance company.

§ 92 of the Insurance Law, relating to forfeitures of policies of life insurance and prohibiting same without notice, construed. *Liesny v. Metropolitan Life Insurance Co.*, 86 Misc., 650.

EFFECT OF SECTION.—This section allows to the holder of a policy of life insurance, who has defaulted in the payment of his premiums, a year of grace during which to pay the premiums and become reinstated, only where the insurance company has neglected, before the due day, to give the statutory notice of the time when the premium became due, or, after the due day, has

failed to require payment at a fixed date within the year; if the insurance company gives the necessary notice no grace is allowed. *Schnell v. Mut. L. Ins. Co.*, 53 App. Div., 172.

The mailing of the notice of forfeiture may be shown by the direct testimony of agents authorized to mail such notice, although there were many agents engaged in the various steps of mailing notices; the requirement of section 92 is satisfied if the notice be mailed whether actually received by the insured or not. *Wolarsky v. N. Y. Life Ins. Co.*, 120 App. Div., 99.

Section 92, forbidding forfeiture of policies within one year from default unless notice has been mailed to the insured at his last known post-office address in this state, is applicable only to persons having a known post-office address in this state; § 312 (now repealed), requiring notice to the insured, applied only to "stipulated premium" policies or to companies incorporated as stipulated premium companies and was not to be read in connection with § 92 or to be taken as extending its provisions. *Napier v. The Bankers' Life Ins. Co.*, 51 Misc., 283.

The provisions of § 92 apply to and govern a policy issued and to be performed in New York, though the assured resides in another state. *Equitable Life Assur. Soc. v. Nixon*, 81 Fed. Rep., 796.

The provision in the statutes of New York that "no life insurance company doing business in the state of New York shall have power to declare forfeited or lapsed any policy hereafter issued or renewed, by reason of non-payment of any annual premium, or interest, or any portion thereof, except as hereinafter provided," does not apply to or control such a policy issued by a corporation of New York in another state, in favor of a citizen of the latter state, but is applicable only to business transacted within the state of New York; and in such case the rights of the parties are measured by the terms of the contract. *Mut. Life Ins. Co. v. Cohen*, 179 U. S., 262.

SUBSTANTIAL COMPLIANCE.—To enable a life insurance company to avail itself of the provisions of section 92, permitting the forfeiture of a policy, it must substantially comply with all the terms of the statute though the notice to be mailed need not literally follow the words of the statute. The failure to state in said notice that the person named therein as defendant's general agent was the duly appointed agent to collect the premium, and that it should be paid before a certain date is not a substantial compliance with the statute. *Flint v. Provident Life & Trust Co.*, 76 Misc., 673.

PAYMENTS.—The duration and validity of a policy, whatever may be its terms, is not dependent upon payment of premium on the day named, but upon payment within thirty days after notice is given; the statute is part of the contract, and governs the rights and obligations of the parties, the same as if all its terms and conditions had been incorporated therein. *Baxter v. Brooklyn L. Ins. Co.*, 119 N. Y., 450.

When one holding a term life insurance policy has an option to change it for a straight life insurance policy at a different rate, on failure of the insured to pay three premiums on the new policy, it lapses. *McGuire v. Union Mut. Life Ins. Co.*, 114 App. Div., 344.

Mere proof of non-payment of premiums when due will not defeat an action upon a policy, unless coupled with proof of the service of the notice of forfeiture required by section 92. *Auspitz v. Equitable Life Assurance Co.*, 62 Misc., 469.

Where a life insurance policy for one month provides for its renewal for each successive month upon payment of premiums provided to be paid, viz., on the first day of each year from the date of the policy of an expense premium, and also for the payment, within thirty days after the notice of a demand therefor, of mortuary premiums, the timely payment of the expense premium does not operate to continue the policy in force to the end of the month in which a mortuary premium not paid falls due; the payment of such mortuary premium is not simply a condition precedent to the right to renew the policy for the succeeding month; such a policy falls within the exception stated in this section, requiring that notice be given to the insured before his policy can be forfeited. *Baldwin v. Provident Life Assur. Soc.*, 23 App. Div., 5.

FRATERNAL BENEFIT SOCIETY.—Chap. 341 of 1876, as amended by chap. 321 of 1877, requiring notice to be given of the time when assessments are payable, was repealed by chap. 690 of 1892, and, by virtue of the provisions of § 233 of that act, fraternal benefit societies are now exempted from the necessity of giving such a notice. *Bopple v. Supreme Tent of Macabees*, 18 App. Div., 488.

ASSESSMENT COMPANY.—This section does not apply to assessments of an assessment insurance company, but such assessments are governed by § 210 of the Insurance Law. *Greenwald v. United L. Ins. Assn.*, 18 Misc., 91.

RENEWAL.—The payment of each annual premium constitutes a "renewal" of a policy within the meaning of this section; this section, therefore, applies to a policy issued before the passage of the act, but renewed thereafter by the payment of premiums as they fell due. *Carter v. B. L. Ins. Co.*, 110 N. Y., 15.

When the insurance company accepts a premium after it has become due and payable, the company revives and reinstates the policy from the time the payment is made. *Wyman v. Phoenix Mut. L. Ins. Co.*, 45 Hun, 184.

MORTALITY ASSESSMENTS.—Under chap. 321 of 1877, providing that before a forfeiture of a life policy can be declared for non-payment of principal or interest, notice must be mailed to the holder, it was held that it applied only to premiums or interest payable at stated intervals, not to mortality assessments. *Merriman v. K. M. B. Ass'n*, 138 N. Y., 116.

NOTICE.—Notice to the person insured is sufficient; notice need not be given to a beneficiary. *Rowe v. Brooklyn L. Ins. Co.*, 11 App. Div., 532.

A notice to the insured under section 92, which fails to state that the policy will become forfeited if payment is not made "by or before the date it falls due" is not sufficient to authorize a forfeiture for non-payment of the premium. *Flint v. Provident Life & Trust Co.*, 215 N. Y., 254.

A notice which contains statements reminding the assured of the time and place when and where to make any payments required by the terms of the contract, the amount thereof and the effect of non-payment, is sufficient, although it does not follow literally the words of the statute. *McDougall v. Provident Sav. Soc.*, 135 N. Y., 551.

Where the notice, after stating the amount of the premium, the time when it would fall due, where it was to be paid, and that the conditions of the policy required payment to be made on or before the premium is due, added, "and members neglecting so to pay are carrying their own risks," and, as a postscript, "prompt payment is necessary to keep your policy in force," and there was no statement that if payment was not made the policy would

"become forfeited and void," such notice was not a compliance with the requirements of the statute and was insufficient to work a forfeiture. *Phelan v. Northwestern Mut. L. Ins. Co.*, 113 N. Y., 147.

Although § 92 of the Insurance Law makes the affidavit of the person mailing the notice of forfeiture of the policy presumptive evidence of such mailing, such affidavit made in a foreign state is insufficient to establish the mailing of the notice in opposition to testimony that it was never received, unless the official character of the notary is authenticated; § 92 prevents the forfeiture of the policy during the thirty-day period. *Carr v. Prudential Ins. Co.*, 115 App. Div., 755.

A notice which states, "if your payment should not be made when due, your policy will cease to be in force" is not sufficient; unless good reasons for a departure therefrom appear, a strict compliance on the part of insurance corporations with the words of the statute is necessary to legalize the forfeiture or lapse of a policy. *Schad v. Security Mut. Life Assoc.*, 11 App. Div., 487.

In an action to recover upon a life insurance policy, it is error to charge that even though there was a default in the payment of premium, the verdict must be for the plaintiff, if the notice of the date for payment was not given as provided by section 92, for the reason that under the statute then in force, the policy became forfeited and lapsed one year after default in the payment of the premium, even though the notice required by said section 92 had not been served. *Liesny v. Metropolitan Life Insurance Co.*, 166 A. D., 625.

When the notice required by the statute is served before the premium is due, no further notice is required. *Conway v. P. M. L. Ins. Co.*, 140 N. Y., 79.

It is an essential prerequisite for a life insurance company, which seeks to declare forfeited a policy issued by it, to establish that the notice required by § 92 was mailed to the insured. *Howell v. Hancock Mut. Life Ins. Co.*, 107 App. Div., 200.

A life insurance company which accepts a premium note under an agreement that the policy shall become void if the note is not paid, after having given notice of the date when the premium became due, is not obliged to give a similar notice respecting the maturity of the note in order to declare a forfeiture of the policy; where an insured dies within six months after his policy lapsed, the beneficiary is entitled to the protection of § 88 of the Insurance Law, which provides for the continuation of the policy for such period of insurance as may be purchased by any reserve without making the demand mentioned in said law, or exercising the option to continue the policy; a demand and the exercise of the option provided for by the policy is necessary only where the insured lives for the six months following the forfeiture. *Bartholomew v. Security Mutual Life Insurance Co.*, 140 App. Div., 88; 204 N. Y., 649.

Notice is not required under § 92 of the Insurance Law, prior to notes becoming due which are given for a premium, when the statutory notice has been given as required thereby prior to the premium becoming due. *O'Brien v. Union Central Life Ins. Co.*, 207 N. Y., 180; aff'g 140 App. Div., 362.

INSUFFICIENT NOTICE.—A notice under this section is insufficient where its form, its verbiage, its surplusage, its suggestions, intimations and advice,

intermingled with the language of the statute, are all repugnant to directness and simplicity. The notice is intended to be a "danger signal" but here it is confused with a dozen other signals. *McCormack v. Securities Mutual Life Insurance Co.*, 161 App. Div., 33.

CONTENTS OF AFFIDAVIT.—The affidavit which this section declares shall be presumptive evidence that the notice has been duly given, should show to the court the contents of the notice in order that the court may determine whether the notice sent complied with the requirements of the statute; an affidavit which does not identify the particular policy to which the notice related is ineffective. *McCall v. Prudential Ins. Co.*, 98 App. Div., 225.

QUESTION OF FACT.—What proof as to the mailing of such notice presents a question of fact for the jury. *Howell v. Hancock Mut. L. Ins. Co.*, 107 App. Div., 201.

PLEADING.—Evidence of service of the notice required by this section is inadmissible unless service of notice is pleaded. *Fischer v. Met. L. Ins. Co.*, 167 N. Y., 178.

When, in an action on a policy, the insurance company seeks to interpose the defense that the policy is forfeited for non-payment of premiums, it is bound to allege and prove both that the premium was not paid, and that the notice required by the statute had been served more than thirty days before the policy had been declared forfeited. *Fischer v. Metropolitan L. Ins. Co.*, 37 App. Div., 575.

BURDEN OF PROOF.—The burden of proving that the notice has been served rests upon the insurance company, and the insured is not required to allege the failure of the insurance company to serve it in the complaint. *Baxter v. Brooklyn L. Ins. Co.*, 44 Hun, 184.

WAIVER OF FORFEITURE.—In the absence of any agreement a waiver of forfeiture of a policy of life insurance results only from negotiations or transactions with the insured, by which the insurer, after knowledge of the forfeiture, recognizes the continued existence of the policy, or does acts based thereon, or requires the insured by virtue thereof to do some act or incur some expense or trouble. *Ronald v. M. R. F. L. Assn.*, 132 N. Y., 378.

It is within the general powers of the secretary of a life insurance company to waive prompt payment of premiums about to fall due on one of its policies, and the valid exercise of his power in this respect does not depend upon the particular place where he may be at the time. *Hastings v. B. I. Ins. Co.*, 138 N. Y., 473.

The statute of New York prescribing the condition upon which a life insurance policy may be forfeited for the non-payment of a premium is mandatory, and its provisions may not be waived by either or both parties. *Ruling Ins. Dept.*, June 2, 1909.

MODIFICATION OF TERMS.—It is competent for the parties to modify the terms of the original contract with respect to the time of payment and the effect of a failure to make punctual payments, and when such an agreement exists a forfeiture does not work on account of it. *DeFrece v. Nat. L. Ins. Co.*, 136 N. Y., 144.

A company may not omit the "grace clause" in policies on the monthly payment plan. *Ruling Ins. Dept.*, May 9, 1907.

The assignment of a policy is effective between the parties without notice to the company. Ruling Ins. Dept., Aug. 9, 1909.

An attempt to limit the time for action on a policy to one year is prohibited. Ruling Ins. Dept., Aug. 3, 1909.

DEATH OF MEMBER.—Where the holder of a mutual benefit certificate dies after he has been notified of an assessment, but before the time allowed for its payment, his failure to pay does not forfeit the certificate; though the holder may have failed to pay an assessment which he was notified to pay, the certificate is not forfeited if the notice did not state that unless it was paid the certificate would be forfeited. *Elmer v. Mut. Benefit L. Assn.*, 19 N. Y. Supp., 289.

NOTE.—A foreign life insurance company, which has due notice of the assignment of a policy issued by it in this state, cannot forfeit the policy for a failure to pay the premium, without giving the assignee the notice to pay and of the intention to forfeit if not paid; and the fact that part of the premium when due was paid in cash and the balance by the assignee's note, reciting that default in payment would render the policy void, does not, in the absence of the statutory notice of the maturing premium, entitle the company to insist upon a forfeiture for the non-payment of the note at maturity. *Strauss v. Union Cen. L. Ins. Co.*, 170 N. Y., 349.

§ 93. Valuation of policies of health insurance.

The superintendent of insurance shall make annual valuations of the policies of any company, insuring against disablement because of sickness, on the net premium basis, according to the British Friendly Society Tables (eighteen hundred and seventy-six, eighteen hundred and eighty) and with interest at three and one-half per centum per annum. He may in his discretion vary the standard in particular cases and may also require additional reserves because of hazardous occupations, impairment of the lives of the insured or insufficient net premiums. This provision shall not apply to policies insuring against specified diseases only and for not longer than one year without privileges or renewal.

Source.—Former § 93, as added by L. 1901, chap. 635.

§ 94. Election of directors.

The following provisions are hereby established for the election of directors:

1. At every election of directors in any domestic mutual life insurance corporation, whether incorporated by special act or under general law and anything to the contrary in its charter, certificate of incorporation or by-laws notwithstanding, every policyholder whose insurance shall be in force and shall have been in force for at least one year prior thereto shall be entitled to vote without other qualification.

2. Every such policyholder, and every other person having a right to vote by virtue of any contract made prior to the enactment of this section which shall remain in force until the date of such election, shall be entitled to vote in person or by proxy or by mail, as herein provided.

3. Except as otherwise now provided with reference to existing policies, every policyholder shall be entitled to one vote only irrespective of the number of policies or the amount of insurance held by him; and unless a policy shall have been assigned more than six months prior to the election by an assignment absolute on its face to an assignee other than the corporation which shall have issued the policy the person upon whose application the policy shall have been issued, or if the application be signed by more than one person, the person whose life is insured shall be deemed to be a policyholder entitled to vote as aforesaid; in case a policy shall have been assigned as aforesaid, the assignee shall be deemed to be a policyholder entitled to vote, provided his signature, either attested by the assignor or acknowledged in like manner as in case of a deed to be recorded in this state, shall have been filed at the home office of the corporation which shall have issued the policy.

4. Not less than five months nor more than eight months prior to every such election, on request of not less than twenty-five policyholders entitled to vote at the last prior election, which request must be signed by each of said policyholders and acknowledged by each of them in the same manner as in the case of a deed to be recorded in the state of New York, a duplicate of such request to be filed with such corporation and notice of not less than five days of a hearing thereon given to such corporation, the superintendent of insurance, may in his discretion require such corporation within forty-five days, and not less than thirty days, to file in his office a full and correct copy of its list or card catalogue of the names and last known post-office addresses of all policyholders who have been insured for at least one year under a policy for one thousand dollars or more, or any part of such list or card catalogue as he may specify. Such list or any part thereof which may be ordered filed shall be arranged, classified and corrected as may be directed by the superintendent of insurance; provided, however, that if nominations are made, other than those nominated on the administration ticket by the board of directors, a complete list or card catalogue of names of all of

such policyholders shall be so filed within forty-five days after the copy of said certificate of such nominations certified by said superintendent of insurance, shall be filed at the home office of the said corporation, which list or card catalogue shall be corrected from the records of the home office of such corporation so that a list or card catalogue as nearly correct as may be shall be on file to within three months of such election.

5. Said list or card catalogue or any part thereof so filed while in the custody of the superintendent shall be subject to inspection under regulations prescribed by the superintendent of insurance at any time during business hours by any policyholder in said corporation or by his authorized representative, and in case of a contested election, under regulations to be prescribed by the superintendent, may be used in the canvass of the policyholders of the company; provided, however, that after such election, or, if no candidate shall have been nominated other than those nominated by the board of directors, then after the time for such independent nominations shall have expired, such list or card catalogue shall be returned to the corporation filing the same as aforesaid.

6. Where policyholders of any domestic stock life insurance corporation have become or shall become entitled to vote for directors, they shall be entitled to vote in person, by proxy or by mail, as herein provided and a similar list or card catalogue of policyholders, qualified to vote, in accordance with the charter or by-laws of such corporation, except the holders of industrial policies, shall be filed and maintained in the office of the superintendent of insurance and at the home office respectively, similarly arranged and similarly subject to inspection and copy and withdrawal as in the case of mutual corporations as above provided.

7. Where policyholders in any company shall have made nominations as hereinafter prescribed, they, or a committee representing them, shall upon demand, with the approval of the superintendent of insurance and the payment to the company of the actual cost of making such copies, be furnished by such company with a copy of such list of policyholders or with a copy therefrom of the list for a separate jurisdiction. A copy of a list so taken, or of any part thereof, shall be held by persons receiving the same inviolate for the purposes of said nominators in a pending election and shall not be transferred to other persons for any other use

whatever. At the close of the canvass of the votes all copies of such lists shall be returned to the company.

8. At least seven months prior to the date of any election of directors in any such corporation, the board of directors shall nominate candidates for every vacancy to be filled at such election and shall also appoint three persons, jointly or severally, to receive proxies to be voted for said nominees, and shall also file with the superintendent of insurance and at its home office a certificate of the names of the candidates so nominated and of the persons so designated to receive said proxies which shall be described as the "administration ticket."

9. In every such corporation which had over one hundred thousand policies in force at its last preceding election, each in amount of one thousand dollars or more, any qualified voters equal in number to one-tenth of one per centum of such total policies in force, and in every other such corporation, any one hundred or more qualified voters may make other nominations for one or more vacancies to be filled at any such election by filing with the superintendent of insurance at least five months before the election a certificate signed and acknowledged, giving the names and addresses of the candidates nominated, the names and addresses of three persons, jointly or severally, designated to receive proxies to be voted for said nominees, and an appropriate name or title designated by the superintendent of insurance to distinguish the ticket from the administration ticket and other nominations. Such nominators must also file a copy of said certificate, certified by said superintendent, at the home office of the company at least five months before such election.

10. All certificates of nomination shall be accompanied by a written acceptance of such nomination by each nominee thereon. A court of record may for cause shown direct the name of any candidate to be stricken from a ticket on file and may authorize the nominators of such ticket to substitute the name of another person to fill the vacancy so made.

11. If no independent nomination shall have been made as hereinbefore provided, then and in that case all further proceedings in connection with such election as provided by this section may be omitted, and said election shall then be conducted and held under such rules and regulations as the superintendent of

insurance may prescribe; but no votes shall be cast or counted except for said candidates nominated by the board of directors, or for such candidates as the board of directors may have nominated to fill vacancies among said candidates caused by the death, disability or refusal to stand as candidates of any one or more of those so nominated.

12. At least three months prior to any such election the corporation shall cause to be mailed, in a serially numbered sealed envelope with postage prepaid, to each policyholder whose name shall be upon said list and whose policy shall still be in force, at his last known post-office address, a corresponding serially numbered official ballot in a form approved by the superintendent of insurance and containing the respective tickets nominated as hereinbefore provided and the names and addresses of the persons so appointed to receive proxies. A corresponding serially numbered stub or card containing the name and address of the policyholder to whom each ballot is sent shall be retained at the home office of the company for the purpose of identifying said ballot when returned. Such official ballot shall be conveniently arranged under the names or titles by which the nominations have been designated and shall have printed upon it the name of the company, the post-office address of its home office, the number of directors to be elected and the names of those whose terms expire, the date of the election and instructions as herein provided for executing such official ballot or for the use of a proxy as herein provided and a designated space for the signature of the policyholder, the number of one of his policies and the signature of a subscribing witness.

13. No other or different ballot shall be used, except that a duplicate ballot or ballots may be supplied to any policyholder and voter or to the holder of his proxy, for his own use, pursuant to rules and regulations prescribed by the superintendent of insurance.

14. There shall be enclosed in such sealed envelope with such official ballot a suitable returned gummed envelope having thereon the name and post-office address of the home office of the corporation and the words "ballot for directors." There shall also be enclosed in such sealed envelope a suitable blank proxy

upon which shall be printed a statement of the right of the policyholder to vote either by mail or by proxy as herein provided or in person.

15. No other papers or written or printed matter shall be enclosed in such sealed envelope. Specimen copies of such sealed envelope and enclosures shall be approved by the superintendent of insurance before being so mailed.

16. A policyholder desiring to vote by mail must indicate the name of the nominee or nominees for whom he desires to vote or strike out the name or names of those for whom he does not desire to vote upon the official ballot so provided or must otherwise suitably indicate in the blank space thereon the nominee or nominees for whom he desires to vote, and must sign the said official ballot in his own handwriting in the presence of a subscribing witness, and place or cause to be placed thereon the number of at least one policy held by him. Failure to state or to correctly state such policy number shall not render a ballot void or subject the policyholder to any penalty.

17. Such policyholder must enclose the official ballot so marked in such return envelope or in a similarly inscribed envelope. Such envelope containing the ballot sealed and postpaid shall be mailed by the policyholder to the home office of the company. No policyholder may vote for more than the number of directors so to be elected and all ballots upon which the intent of the policyholder does not fairly appear shall be void.

18. Any policyholder may vote by proxy executed to any person, whether designated in the certificates filed as aforesaid or otherwise. The execution of a proxy shall be attested by a subscribing witness and the proxy shall set forth the number of at least one policy held by the person giving it. A proxy shall not be valid unless executed within three months prior to the election and shall be used only at such election or any adjournment thereof and may be revoked by the policyholder giving the same at any time prior to the opening of the polls upon the day of such election. In exercising such proxy the holder or holders thereof shall vote only upon the official ballot, or the duplicate thereof, furnished to such policyholder as hereinbefore provided, to which such party shall be attached. In so voting the proxy

holder shall sign said ballot in the name of the policyholder, and shall also sign his own name as proxy. Ballots voted by proxy holders shall be mailed to the home office, or voted in person by said proxy holder, in the same manner as herein provided for ballots voted directly by policyholders.

19. The votes cast at such election shall be limited to the candidates nominated as aforesaid except that in case of a vacancy occurring upon any ticket so nominated the board of directors of such corporation, if the candidate was upon the administration ticket, and a majority of the nominators if the candidate was upon an independent ticket, shall nominate another candidate in his place by filing a certificate of said nomination with the superintendent of insurance and a certified copy thereof at the home office of the company if such vacancy occurs more than five months prior to the day set for the election, and the name of the candidate so selected shall be set forth in the official ballots sent out by the company. If such vacancy occurs within five months prior to such election then the directors elected at such election shall have power to fill such vacancy.

20. All ballots by mail shall be received at the home office of a company holding an election by two or more persons, one-half of whom shall be appointed for that purpose by the superintendent of insurance and one-half by the directors of the company. The compensation of the custodians so appointed shall be paid by the company. Such custodians shall keep a daily record of the envelopes marked as containing ballots for directors which are received at the home office, and shall securely retain them in their joint custody in safety vaults or compartments accessible only to such custodians and not to either of them separately, under regulations prescribed by the superintendent of insurance. Prior to the closing of the polls election day said custodians shall deliver all ballots so received by them to the inspectors of election.

21. The election shall be held at the home office of the company. The polls shall be opened at ten o'clock in the forenoon and remain open until four o'clock in the afternoon of the day of election, at which time they shall be closed. All votes cast at such election shall be by ballot as hereinbefore provided.

22. The superintendent of insurance shall appoint an adequate number of inspectors of election who may employ expert accountants and assistants and may procure stationery and supplies for conducting the election and canvassing the votes. Their compensation and necessary disbursements shall be paid by the company. Such inspectors shall have power to determine all questions concerning the verification of the ballots, the ascertainment of the validity thereof, the qualifications of the voters and the canvass of the vote; and with respect thereto shall act under such rules and regulations as shall be prescribed by the superintendent of insurance.

23. All envelopes marked substantially as hereinbefore prescribed received by mail at the home office of the company at any time prior to the day of election or on that day before the polls are closed shall be forthwith delivered intact without opening to the custodians appointed as hereinbefore provided and before the polls are closed shall be delivered to the inspectors of election.

24. No person shall conceal or withhold or aid or abet any other person in concealing or withholding from the custodians or inspectors any such envelope; nor shall any person, other than an inspector, open or aid or abet any person to open any such envelopes.

25. No ballots received by mail at the office of the company or offered personally or by proxy after the polls are closed shall be counted. All ballots offered personally or under proxies and all ballots received by mail at the office of the company as aforesaid before the polls are closed shall be received by the inspectors subject to verification and ascertainment of the validity thereof and of the qualifications of the voter.

26. Immediately upon the closing of the polls the inspectors shall proceed to the examination of the ballots and shall canvass the votes lawfully cast. The canvass shall proceed from day to day and the inspectors shall certify the result to the company and to the superintendent of insurance as soon as it is completed.

27. Representatives designated by a majority of each three persons who shall have been appointed to receive proxies to be voted for tickets nominated as aforesaid may, in such number as

shall be approved by the superintendent of insurance, be present during the casting, verification and canvass of the votes. The compensation of such representatives shall not be a charge upon or paid from the funds of the company.

28. All ballots and proxies received by the inspectors of election shall immediately upon the completion of the canvass be placed in sealed packages and shall be preserved by the said inspectors for a period of four months subject to the order of any court having jurisdiction of any proceedings relating thereto.

29. The superintendent of insurance shall have power to supervise and direct the methods and procedure of all elections herein provided for and to make all further needful rules and regulations concerning the same. All bills for or on account of the custodians of ballots and inspectors of election, their employees, assistants, necessary expenses or disbursements, during the conduct of such election, and the canvass of the votes, shall be approved by the superintendent of insurance before payment by the company.

30. The said elections and the conduct thereof shall at all times be subject to the supervision and control of the courts in like manner as elections for state, county and municipal officers so far as applicable.

31. The including by any corporation of the name of any person in any list of policyholders required by this section shall not be construed as an admission by the corporation of the validity of any policy, and no such list shall be competent evidence against the corporation in any action or proceeding in which the question of the validity of any policy or of any claim under it is involved.

32. No insurance company, and no officer, agent or employee thereof shall knowingly omit the name of a policyholder and voter from the lists herein required to be filed, or shall knowingly omit to give the correct name and address of such policyholder and voter, or knowingly give a wrong address, or shall expend, advance or loan any money of the company contrary to the provisions of this section.

33. Except where such expenditure is authorized or required by this section, no money of the company shall be expended in connection with such election or in canvassing therefor, and no officer or agent of the company shall directly or indirectly make

any advance or loan of such moneys to any person in connection with or for the purpose of such election or canvass.

34. No officer, salaried agent or employee shall, within the period between the filing of the nominations and the election, during business hours, devote any of his time in soliciting votes in support of or in opposition to any candidate or list of candidates in connection with any such election. No officer, agent or employee shall compel or coerce any other officer, agent or employee to support, work for, or oppose any candidate or any list of candidates. The stationery or supplies of the company or office space devoted to the conduct of its business shall not be used for furthering the interest of any ticket or candidate thereon.

35. No person, whether connected with the company or otherwise, shall issue or cause to be issued any circular or other written or printed communication either in behalf of or in opposition to any ticket or any candidate thereon containing any false statement.

Source.—Former § 94, as added by L. 1906, chap. 326, and amended by L. 1907, chap. 623.

Amended by L. 1915, chap. 617. In effect May 12, 1915.

Note.—By the amendment of 1915, the filing of two copies of the complete list of policyholders in the office of the Superintendent of Insurance prior to election, no longer is required, and in place of such requirement, the companies in the discretion of the Superintendent are obliged to file either complete or partial list of policyholders, holding policies in an amount of \$1,000 or more in event of formal request therefor by 25 policyholders. The policyholders' lists so filed are subject to inspection and in a contested election may be used in the canvass under regulations prescribed by the Superintendent. In addition such lists filed by stock corporations whose policyholders are entitled to vote for directors are subject to copy. Qualified voters equal in number to one-tenth of one per cent of the total policies in force may make independent nominations except in case of corporations having less than one hundred thousand policyholders, each in amount of one thousand or more, one hundred qualified as voters is sufficient. No change is made in the qualifications of voters.—Ed.

A proxy must be executed within the three months prior to the election. Ruling Ins. Dept., Oct. 29, 1912.

Vacancies caused by declination of nominees to act as directors within five months prior to the approaching election may be filled by action of directors elected at such election. Ruling Ins. Dept., April 15, 1913.

A proxy only covers directors named in the nomination certificate. Ruling Ins. Dept., September 27, 1912.

Policyholders of a domestic life insurance company may vote for directors nominated by such policyholders; a stockholder may vote as such or as a policyholder, but not as both. Attorney-General Rep., 1906, page 563.

The provision requiring a certificate of nomination to be filed, etc., does not authorize the superintendent of insurance to change the nominations or make any different certificate of the nominees from that filed; after the filing of such record the court will not compel the superintendent of insurance to change the record or compel the insurance company to send a different statement of nominations. *People ex rel. Shook v. Kelsey*, 114 App. Div., 888.

§ 95. Conversion of a stock life insurance corporation into a mutual life insurance corporation.

Any domestic stock life insurance corporation, whether incorporated under a general law or by special act, may become a mutual life insurance corporation, and to that end may carry out a plan for the acquisition of shares of its capital stock, provided, however, that such plan: (1) Shall have been adopted by a vote of a majority of the directors of such corporation; (2) shall have been approved by a vote of stockholders representing a majority of the capital stock at a meeting of stockholders called for the purpose; (3) shall have been approved by a majority vote at a meeting called for the purpose, in such manner as shall be provided for in such plan, of policyholders each insured in at least one thousand dollars and whose insurance shall then be in force and shall have been in force for at least one year prior to such meeting; and (4) shall have been submitted to the superintendent of insurance and shall have been approved by him in writing, provided that such plan shall not be approved by the superintendent unless at the time of such approval the corporation, after deducting the aggregate sum appropriated by such plan for the acquisition of all of its capital stock, shall be possessed of assets sufficient to maintain its deposit theretofore made with the superintendent and not less than the entire liabilities of the corporation, including the net values of its outstanding contracts computed according to the standard adopted by the corporation under section eighty-four of this chapter, and also all funds, contingent reserves and surplus save so much of the latter as shall have been appropriated under such plan.

Source.—Former § 95, as added by L. 1906, chap. 326.

Amended by L. 1911, chap. 150.

§ 96. Limitation of new business.

No domestic life insurance corporation shall issue in any year new policies for a larger amount in the aggregate than as follows,

to wit: If the total amount of insurance by said corporation in force on the thirty-first day of December of the preceding year is more than fifty million dollars, and not in excess of one hundred million dollars, not more than thirty-five per centum thereof; if more than one hundred million dollars, and not in excess of three hundred million dollars, not more than thirty per centum thereof, or thirty-five million dollars, whichever is the larger; if more than three hundred million dollars, and not in excess of six hundred million dollars, not more than twenty-five per centum thereof, or ninety million dollars, whichever is the larger; if more than six hundred million dollars, not more than one hundred and fifty million dollars, or it may increase its new business over the largest amount issued in any one of the three years immediately preceding in the proportion in respect to said amount which the difference between twenty-five per centum of its net renewal premiums computed according to the bases of mortality and interest assumed in calculating its liabilities, and its total expenses for such preceding year, after deducting from said total expenses (1), the items of first year expenditure specified in the first sentence of section ninety-seven of this chapter, (2) its actual investment expenses (not exceeding one-fourth of one per centum of the mean invested assets) and (3) taxes on real estate and other outlays exclusively in connection with real estate, bears to said net renewal premiums; provided, that in determining the amount of insurance in force and the amount of new insurance issued, policies of reinsurance, group insurance granted on the same plan within each group, under a contract with a given person, firm or corporation, covering groups of not less than one hundred lives all in the employ of such person, firm or corporation, and industrial policies issued upon the weekly premium plan and all premiums on such policies and the expenses in connection with such policies, shall be excluded and there shall be included only that insurance upon which the first premium or instalment thereof has actually been received. If it appear that in the ordinary course of its business for any calendar year the amount of insurance issued by any corporation will probably exceed the limitation imposed by this section, the superintendent of insurance may before the expiration of such year authorize such corporation in writing to issue additional insurance not to exceed ten per centum of the limitation for such year; but such additional insurance shall be charged as a part of the new policies for the next succeeding year, in accordance with the limitations of this section. A foreign

life insurance corporation, which shall not conduct its business within the limitation and in accordance with the requirements imposed by this section upon domestic corporations, shall not be permitted to do business within this state.

Source.—Former § 96, as added by L. 1906, chap. 326.

Amended by L. 1910, chap. 697; L. 1911, chap. 369; L. 1913, chap. 304, and L. 1916, chap. 360. In effect May 1, 1916.

Note.—The amendment of 1916 eliminated group insurance, as defined, from the limits prescribed by the section and modified percentages and amounts of insurance, which may be written.—Ed.

Note.—The purpose of the amendment of this section by chapter 304 of 1913 was to allow the superintendent to authorize the issuing of additional insurance in excess of limitation to amount of ten per centum of limitation; but such additional insurance is charged as a part of the new policies for the next succeeding year.—Ed.

Section 96 is not a local or private bill and does not violate § 16 of article 3 of the State Constitution providing that no such bill shall be expressed in the title; nor is it unconstitutional under § 18 of article 3, because corporations with a certain kind of insurance are excepted. *Bush v. New York Life Ins. Co.*, 135 App. Div., 447.

Annuity contracts, whether survivorship annuities or not, do not come within the provisions of §§ 96, 97, except as to the provisions of the latter relating to expenses other than investments. *Ruling Ins. Dept.*, Aug. 2, 1909.

Only policies actually paid for and of which the company has received proper advice so as to make the proper entries on its books prior to December first in any given year are contemplated by the word "issue" in § 97. *Ruling Ins. Dept.*, July 23, 1909.

The words "policies of re-insurance" as used in section 96 cover the case of the assumption by one company of the policies of another. *Ruling Ins. Dept.*, Nov. 9, 1911.

Policies issued under a reinsurance contract between Postal and Mutual Reserve companies not regarded as new business. *Attorney-General Rep.*, September 13 and July 22, 1909.

Limitations of section 96 apply to foreign life insurance corporations doing business in this State. *Ruling Ins. Dept.*, October 3, 1912.

Where a company has written an excess under permission of the Superintendent, in arriving at the limit for the succeeding year, it should start with the total amount paid for and apply the fraction of increase to that amount without deducting the excess issued, and after getting the increase add it to the original amount written and then deduct the excess as a final part of the computation. *Ruling Ins. Dept.*, June 30, 1915.

Excess of preceding year does not enter into computation. *Ruling Ins. Dept.*, June 30, 1915.

§ 97. Limitation of expenses.

No domestic life insurance corporation shall in any calendar year, after the year nineteen hundred and six, expend or become

liable for, including any and all amounts which any person, firm or corporation is permitted to expend on its behalf or under any agreement with it (1) for commissions on first year's premiums, (2) for compensation, not paid by commission, for services in obtaining new insurance exclusive of salaries paid in good faith for agency supervision either at the home office or at branch offices, (3) for medical examinations and inspections of proposed risks, and (4) for advances to agents, a total amount exceeding in the aggregate (a) the loadings upon the premiums for the first year of insurance received in said calendar year (calculated on the basis of the American experience table of mortality with interest at the rate of three and one-half per centum per annum) and (b) the present values of the assumed mortality gains for the first five years of insurance on policies in force at the end of said calendar year on which the first premium, or instalment thereof, has been received during said calendar year, as ascertained by the select and ultimate method of valuation as provided in section eighty-four of this chapter; and (c) on policies issued and terminated in said calendar year the full gross premiums received, less the net cost of insurance for the time the insurance was in force, computed by the American experience select and ultimate table, three and one-half per centum. No such corporation shall make or incur any expense or permit any expense to be made or incurred upon its behalf or under any agreement with it, except actual investment expenses (not exceeding one-fourth of one per centum of the mean invested assets) and except taxes and also except outlays exclusively in connection with real estate, in excess of the aggregate amount of the actual loadings upon premiums received in said year calculated according to the standards adopted by the company under section eighty-four of this chapter, and the present values of the assumed mortality gains hereinbefore mentioned. Provided, however, that any such corporation having less than eighty millions of insurance in force, may incur a total expenditure exceeding the limits of expenditure as herein defined by an amount not greater than the following percentages of its loadings for the preceding calendar year, to wit: having at the end of such year less than ten millions, forty per centum; having twenty but less than thirty millions, thirty-five per centum; having thirty but less than forty millions,

thirty per centum; having forty but less than fifty millions, twenty-five per centum; having fifty but less than sixty millions, twenty per centum; having sixty but less than seventy millions, fifteen per centum; having seventy but less than seventy-five millions, ten per centum; having seventy-five but less than eighty millions, five per centum. No such corporation, nor any person, firm or corporation on its behalf or under any agreement with it shall pay or allow to any agent, broker or other person, firm or corporation for procuring an application for life insurance, for collecting any premium thereon or for any other service performed in connection therewith any compensation other than that which has been determined in advance. Except as hereinafter provided all bonuses, prizes and rewards, and all increased or additional commissions or compensation of any sort based upon the volume of any new or renewed business or the aggregate of policies written or paid for, are prohibited. Nothing herein contained is to be construed as prohibiting the institution of contests or competitions among agents, and the recognition of success in such competitions by the awarding of ribbon decorations, medals, pins, buttons or other tokens of small intrinsic value, given not as compensation but as a bona fide recognition of merit. No such corporation shall pay commissions upon renewal premiums received upon policies issued after the year nineteen hundred and six, in excess of five per centum of the premium annually for fourteen years after the first year of insurance in the case of endowment policies providing for less than twenty annual premiums, nor in excess of seven and one-half per centum of the premium annually for the first nine years after the first year of insurance and five per centum of the premium annually for the next ensuing five years in the case of other forms of policies; provided that an amount found to be equivalent to the aggregate amount so payable by a calculation approved by the superintendent of insurance and based upon mortality, interest and lapse rates, may be distributed through three or more years, or through a period exceeding fourteen years, but not more than two-fifths of such amount shall be payable for any one year; provided further that in any agency district subject to the supervision of a local salaried representative the renewal commission payable to agents of such district shall not exceed two-thirds of the foregoing rates annu-

ally for fourteen years, subject to the calculation as aforesaid; provided further that any such corporation may condition the allowance or payment in whole or in part of any of the renewal commissions allowed to be paid as aforesaid upon the efficiency of service of the agent receiving the same or upon the amount and quality of the business renewed under his supervision; and also provided that a fee not exceeding three per centum may be paid for the collection of premiums which shall be received for any year after the fifteenth year of insurance. If any such corporation shall compensate its agents, or any of them, after the first insurance year, in whole or in part, upon any other plan than commissions and collection fees, the aggregate sum so paid shall in no year exceed the limitations herein imposed and the schedule and plan of such compensation shall be submitted to and approved by the superintendent of insurance. No such corporation, nor any person, firm or corporation on its behalf or under any agreement with it, shall make any loan or advance to any person, firm or corporation soliciting or undertaking to solicit applications for insurance without adequate collateral security, nor shall any such loan or advance be made upon the security of renewal commissions, or of other compensation earned or to be earned by the borrower except advances against compensation for the first year of insurance. A foreign life insurance corporation which shall not conduct its business within the limitations and in accordance with the requirements imposed by this section upon domestic corporations shall not be permitted to do business within the state. Any stock corporation which has heretofore issued and represented itself as issuing non-participating policies exclusively, and which has changed and become a mutual company, or become a company issuing and representing itself as issuing participating policies exclusively, or any such stock corporation which may hereafter change and become a mutual company, or become a company issuing and representing itself as issuing participating policies exclusively, may incur a total expenditure exceeding the limits of expenditure herein defined by an amount not greater than six per centum of the aggregate net premiums according to the standards adopted by the company as aforesaid. No company transacting business exclusively on the mutual plan shall issue after June thirtieth, nineteen hundred and sixteen, any policy of life or endowment insurance (other than group insurance and reinsurance) upon which the premium loading is less than would enable the company to comply with the provisions of this section limiting total expenses

if the premium loading for all its policies were calculated according to the rule employed by the company for the calculation of the premium loading on such policy. This section shall not apply to expenses made or incurred in the business of industrial insurance nor, except as to the limitation of expenses for the first year of insurance and as to compensation of and loans and advances to agents or solicitors, to stock corporations issuing and representing themselves as issuing nonparticipating policies exclusively.

Source.—Former § 97, as added by L. 1906, chap. 326.

Amended by L. 1909, chap. 301; L. 1910, chap. 697; L. 1913, chap. 304; L. 1914, chap. 103; L. 1915, chap. 617, and L. 1916, chap. 120. In effect April 3, 1916.

Note.—The purpose of the amendment of this section by chapter 304 of 1913 was to clarify it as to giving of prizes and tokens of merit.—Ed.

The amendment of this section by chapter 103 of 1914 added the third sentence, "Provided, however, that any such corporation * * * but less than eighty millions, five per centum."—Ed.

Salaries based on the premiums or on account of new business issued are commissions and must be charged to the cost of new business. Ruling Ins. Dept., Nov. 9, 1911.

The whole of the first year's premium may not be used for expenses, leaving nothing for the required reserve. There must be first set aside from the premiums received an amount sufficient to pay the cost of carrying the policy at select rates to the date when the next premium is due, and the whole balance of the premium actually received by the company is available to the company as a margin provided that said balance does not exceed the margin permitted, that is the aggregate of the loading and the assumed gains. Attorney-General Rep., Nov. 21, 1907.

Where a five-year non-renewable term policy under the standard policy form of the State of New York is exchanged for an ordinary life, limited payment life or endowment policy after the first policy year and within five years from date of issue in accordance with the provision in said standard policy forms, the policy issued in accordance with such provision may be considered "new insurance," and to the agent who effects the change may be paid a regular first year commission and allowed nine renewals. Ruling Ins. Dept., June 9, 1908.

This section has no application to new business secured under contracts entered into before the passage of the law. Ruling Ins. Dept., June 10, 1909.

If a general agent make a loan or advance on behalf of an insurance company, or under any agreement with it, it is within the prohibition of the statute. Attorney-General Rep., 1906, page 548.

Foreign life insurance corporations must conform with the provisions of section 97 in regard to limitation of expenses. Attorney-General Rep., 1906, page 549.

This section does not apply to a contract with an agent entered into before its passage and should not be construed as retroactive. *Boswell v. Security Mutual Life Ins. Co.*, 119 App. Div., 723.

Annuity contracts, whether survivorship annuities or not, do not come within the provisions of §§ 96, 97, except as to the provisions of the latter relating to expenses other than investments. Ruling Ins. Dept., Aug. 2, 1909.

§ 52 of the Domestic Relations Law, providing that the portion of insurance on a husband's life purchased by the excess of an annual premium over \$500 shall be liable for his debts, applies to a policy negotiated by a husband and payable to his wife as well as to policies which are negotiated by the wife herself. *Guardian Trust Co. v. Straus*, 139 App. Div., 884.

SINGLE AGENT.—This section added by chap. 328 of 1906, limits payment to any single agent, and not merely the total expenditure of the corporation; the statute deals with agents' compensation and the expenses of procuring new insurance; the contract of the agent is subject to the condition that the corporation shall continue to transact business and section 97 although having the effect of reducing an agents' commissions is not unconstitutional. *Boswell v. Security Mutual Life Ins. Co.*, 119 App. Div., 723.

NYLIC.—The legal relation created between a company and the soliciting agent by membership in "Nylic for Agents" is contractual; prior to the act of 1906 there was no legal obstacle in the way of "Nylic for Agents;" "Nylic" made prior to April 27, 1906, is not subject to the provisions of chapter 326 of 1906; "Nylic" expense should be classified as a general expense; since the amendments of sections 97 and 98 by chapter 326 of 1906 "Nylic" cannot be continued for agents employed after April 27, 1906. *Attorney-General Rep.*, 1906, page 565.

ADDITIONAL COMMISSION.—Section 97 will not permit "the drafting of a contract to provide that the agent shall receive five per cent additional commission upon first annual premium, provided he secures a certain amount of paid-for business annually, providing the maximum commission comes within the provisions of the law." Ruling Ins. Dept., June 3, 1908.

It would be unlawful under § 97 for managers of a company in various States to organize an association to contribute a general fund and offer prizes to managers for the largest volumes of business written. Ruling Ins. Dept., Oct. 17, 1910.

It would be a violation of § 97, relating to bonuses, etc., to offer any sum to an agent to write business for ten consecutive weeks and to remit with the application the net for the premium. Ruling Ins. Dept., May 4, 1911.

The amendment to § 97 increasing the number of renewals that may be paid to agents is not retroactive. Ruling Ins. Dept., Feb. 14, 1911.

COMMUTATION OF RENEWALS.—Where an agent has a guarantee of two years' renewals on business written since January 1, 1907, and desires to commute such renewals, also a small amount of commissions on deferred first premiums, if his proposition is made in good faith and he is desirous of severing his relations with his company, the renewals may be purchased provided the limitations of section 97 of the Insurance Law of this state be not exceeded.

If, however, such plan be proposed as a method of commuting renewals it would fall within the prohibition of the statute. Ruling Ins. Dept., November 16, 1908.

The commutation of nine renewals of seven and one-half per cent. each into three renewals of fifteen per cent. each, with a further commuted amount of

thirteen per cent. of the fourth renewal in lieu of the five extra renewals of five per cent. from the tenth to the fourteenth inclusive, is allowable. Ruling Ins. Dept., Sept. 14, 1909.

Where an insurance company's contract with its agents provides that in case their contracts are terminated the company will pay certain net renewal commissions, the company may purchase in one sum the said renewal commissions provided the total amount is within the limitation of § 97. Ruling Ins. Dept., March 27, 1911.

The provisions of § 97 which relate to the commutation of commissions is permissive and not mandatory. Ruling Ins. Dept., Feb. 18, 1911.

There is nothing in the statute prohibiting companies endorsing the contract of a special agent with a manager to guarantee carrying out the renewal agreement if same is conditional on the amount of business written, provided the limitations of § 97 be not exceeded. Ruling Ins. Dept., July 27, 1910.

COMMISSIONS.—Where a company has made a saving *each month* during the first nine months of the year and proposes to pay out the accumulation on business written and paid for, for the tenth month, thus making the commission from seventeen per cent to twenty-two per cent higher than regular first year commissions, such proposition is in conflict with that provision of section 97 which prohibits the payment to any agent, broker, etc., of "any compensation other than that which has been determined in advance." Ruling Ins. Dept., November 4, 1908.

Where a company made a saving under the law of \$150,000 on new business during the first nine months of the year, it cannot lawfully pay out that saving during the balance of the year by increasing the commission to agents, even providing the total expended in that year for new business is not in excess of the amount allowed by law. A saving made by a company under the law should inure to the benefit of the policyholders and may not be paid out to agents in increased commissions. Ruling Ins. Dept., Nov. 4, 1908.

The provisions of section 97 of the Insurance Law governing payments for new business to agents of life insurance companies apply to the payments made for the new business procured by such agents. The restrictions apply to each agent separately and by himself, irrespective of whether the aggregate payments by the company to all its agents do or do not exceed the statutory limitations. The compensation of an agent may not exceed that which has been determined in advance, any increased or additional compensation based upon *the aggregate* of policies written or paid for is prohibited. Ruling Ins. Dept., July 29, 1908.

COMMISSIONS—TERM—RATED POLICY.—"To the sum of the loading on the term premium and the mortality gain on the term insurance, add the loading on the premium for the succeeding contract also the present value of the assumed mortality gains for the first five years of insurance on such contract (its first premium or an instalment thereof having been received during the calendar year for which the computation is made) the result will be the total margins allowed by section 97 of the Insurance Law for commissions, etc., on the term-rated policy." Ruling Ins. Dept., May 26, 1908.

TRAVELING EXPENSES.—Traveling expenses paid to soliciting agents are not to be charged against the margin allowed, for the expenses of first

year's business, but from part of the expenses to be taken out of the actual loading on the total premiums received." Ruling Ins. Dept., June 11, 1908.

Under section 97 three per cent of the extra renewal commissions allowed from the tenth to the fourteenth year, inclusive, cannot be commuted into an extra four and one-half per cent payable on the first renewal (making twelve per cent on such renewal) nor can such three per cent renewal commissions be commuted into an extra two and one-half per cent on both the first and second renewals (making ten per cent on the first and second renewals). This would mean that seven and one-half per cent in each case would be paid on the balance of the first nine renewals and two per cent commission or collection fee beginning with the tenth renewal. Ruling Ins. Dept., May 14, 1909.

Section 97 limits the rate and number of renewal commissions which may be paid to agents by life insurance companies; it does not require that the full number of renewals allowed by law be paid in each case. Ruling Ins. Dept., Dec. 27, 1909.

Renewal commissions of seven and one-half per cent. on life policies and endowments, providing for twenty or more premiums, and five per cent. on endowments, providing for less than twenty premiums during the eleventh and twelfth year, and a collection fee of three per cent. thereafter is allowable. Ruling Ins. Dept., Sept. 17, 1909.

The temporary enjoyment of a reward of efficiency that brings no pecuniary return to an agent does not come within the prohibition of this section. Ruling Ins. Dept., Dec. 19, 1910.

Under § 97, a company may not offer an honor prize of \$250 in gold to be awarded upon the persistence of effort and continuity of purpose as evidenced by an agent and not dependent on the volume of policies written. Ruling Ins. Dept., Dec. 30, 1910.

A corporation cannot in addition to the renewal commissions provided for in § 97 for the first 14 policy years allow the agent a collection fee not exceeding three per cent. Ruling Ins. Dept., Feb., 1911.

It is not objectionable under § 97 to award a button of trifling cost to agents who write a certain amount of ordinary business within a year or to make them members of a club under a denomination indicating the amount of business written, such membership to involve only public mention, the award of a certificate and the giving of a button of small cost. Ruling Ins. Dept., April 28, 1911.

Where under a contract for commissions, the same are payable to the estate of the agent in case of death, the bank exchange in collecting renewal premiums should not be paid by the insurer but should be made a charge against the renewals to be paid to the estate. Ruling Ins. Dept., March 4, 1911.

The language "on its behalf" prohibits payment by any person on behalf of the company for forbidden purposes. Ruling Ins. Dept., Aug. 22, 1907.

A mutual life company may not give a subscription to anti-tuberculosis league. Ruling Ins. Dept., Oct. 18, 1911

Computations for expenses are to be made by calendar years and should not include fractional payments made on issue of previous year, but issues of the year in question, to be received the following year. Ruling Ins. Dept., June 29, 1906.

What are to be included in first year's expense limitations. Ruling Ins. Dept., June 3, 1915.

Limitation on margins for expenses on term policies restricting expenses to the maximum value at any age of the office premium less one-half of the net single premium for one year's term insurance on the basis of American $3\frac{1}{2}$ per cent, which assumes the mortality in the first year of insurance as 50 per cent of the tabular rate in accordance with section 84 approved. Ruling Ins. Dept., Oct. 29, 1906.

Date of changed policy controlling factor in regard to subjecting term policy to limitation of expenses thereon. Ruling Ins. Dept., March 5, 1907.

Loadings on annuity contracts should be included in calculating the first year's expenses. Ruling Ins. Dept., July 26, 1907.

Where an advance payment is made less in amount than a quarterly premium of the policy applied for, such advance payment is "an installment" within the meaning of section 97. Ruling Ins. Dept., July 9, 1906.

Computations relating to first year's expenses should be based on the Am. Ex. $3\frac{1}{2}$ per cent select and ultimate table, both as to loadings on premiums and the present values of assumed mortality gains. Ruling Ins. Dept., Nov. 6, 1907.

Expense allowances are limited to gains realized by the select and ultimate method of valuation. Ruling Ins. Dept., Nov. 21, 1907.

Select and ultimate method is not to be applied to a reinsurance contract. Attorney-General Rep., July 22, 1909; Sept. 13, 1909.

Traveling expenses of soliciting agents are not chargeable against the margin allowed first-year business. Ruling Ins. Dept., Aug. 10, 1906.

It is immaterial whether the insurance contract be made with general agents or sub-agents so long as the limitations of the section be not exceeded. Ruling Ins. Dept., Jan. 14, 1907.

The section prohibits the payment to a soliciting agent of any sum of money in excess of the limitation set forth. Ruling Ins. Dept., Aug. 20, 1907.

The statute does not require the payment of certain commissions, but does require that they be not exceeded. Ruling Ins. Dept., June 21, 1911.

The issuing of insurance policies through mail order house is prohibited. Ruling Ins. Dept., Feb. 19, 1909.

An agent employed on a commission is not entitled to any other compensation. Ruling Ins. Dept., Nov. 14, 1907.

Commissions are not to be paid to clerks regularly employed under a salary. Ruling Ins. Dept., March 2, 1908.

The section does not prohibit contracts by which no commission shall be paid unless a given amount of business is written, provided the commissions do not exceed the amount fixed by the statute. Ruling Ins. Dept., Dec. 26, 1906.

The statute prohibits the giving of prizes to sub-agents based on the amount of business written. Ruling Ins. Dept., July 27, 1910.

Extra commissions based on the amount of new business prohibited by this section. Ruling Ins. Dept., Jan. 21, 1911.

Salaries based on the amount of new business secured must be charged to cost of new business. Ruling Ins. Dept., Dec. 17, 1910.

This statute prohibits the payment of traveling expenses of an agent to a convention as a reward for writing a certain amount of business. Ruling Ins. Dept., Jan. 3, 1907.

The necessary traveling expenses of agents procuring new business, etc., may be paid provided the company keeps within the limitations of section 97. Ruling Ins. Dept., July 16, 1913.

An officer may insure his life in his company, if no rebate is granted or commission paid. Ruling Ins. Dept., Dec. 3, 1906.

Prize systems and general agency trophies are prohibited by this section. Ruling Ins. Dept., Nov. 1, 1906.

Honor rolls or other reward of merit, not involving any pecuniary return to the agent, is not prohibited. Ruling Ins. Dept., Nov. 19, 1906.

Renewal commissions paid to the treasurer of Grange whose members also receive commissions as agents of the life insurance company is not rebating. Ruling Ins. Dept., May 13, 1915.

A new policy issued in accordance with a privilege granted in a term policy is new insurance and the difference in commission and nine renewals can be paid thereon. Ruling Ins. Dept., Feb. 21, 1908.

Renewal commissions to sub-agents based on the amount of business is prohibited. Ruling Ins. Dept., Dec. 27, 1910.

A life insurance company may purchase renewals under contracts antedating enactment of section. Ruling Ins. Dept., Oct. 30, 1906.

The amendment of 1909, allowing additional renewal commissions, is not retroactive. Ruling Ins. Dept., June 26, 1909.

A company may not commute renewal commissions and add the commuted amount to the commissions on first year's premiums. Ruling Ins. Dept., Sept. 21, 1906.

The approval of the superintendent of insurance is not required for commutation less than the rate already approved. Ruling Ins. Dept., March 20, 1909.

The payment to a general agent of salary for supervising a certain territory outside of his general agency district is a question of good faith. Ruling Ins. Dept., July 13, 1914.

A general agent who makes loans to a soliciting agent in the same company is making loans on behalf of the company. Ruling Ins. Dept., March 31, 1909.

Advances to agents on sole security of compensation to be earned by writing new business is allowed. Ruling Ins. Dept., Oct. 5, 1907.

Advances against renewal commissions are prohibited. Ruling Ins. Dept., Dec. 20, 1906.

The last sentence of this section applies to life insurance corporations of other states. Ruling Ins. Dept., Oct. 5, 1906.

The limitation applies to general agents of foreign companies authorized to do business in this State wherever said agents may be located. Ruling Ins. Dept., Oct. 7, 1907.

A company of this state reinsuring business of a foreign corporation may not assume contracts to pay first-year and renewal commissions in excess of the maximum allowed by the section. Ruling Ins. Dept., Oct. 9, 1911.

A stock company is not relieved from the limitations as to renewal commissions. Ruling Ins. Dept., June 4, 1907.

The first payment of renewal commissions may not be added to the first year's commissions. Ruling Ins. Dept., July 8, 1909.

Under the provisions of section 97, "salaries paid in good faith for agency supervision" are not charged to new business. Ruling Ins. Dept., Dec. 3, 1915.

EXPENDITURES.—Expenses of examination of a life insurance company by the state examiners are not such as are limited by § 97. Ruling Ins. Dept., Feb. 4, 1910.

Section 97 limits the expenditure of a life insurance company for new business, but does not require the payment of any certain part or the whole of the largest commission which may be found permissible under the section referred to. Ruling Ins. Dept., Sept. 29, 1909.

Section 97 is not a limitation of the aggregate expenditure which can be made by life insurance companies, but applies to each particular agent and limits the amount which may be paid to him to a certain proportion of the first premiums received by him. This does not limit the amount which may be paid to agents acting under contracts executed prior to the enactment of the section which have a definite period to run. Attorney-General's Rep., June 10, 1909.

The provision of section 97 that "(b) the present values of the assumed mortality gains for the first five years of insurance on policies in force at the end of said calendar year on which the first premium, or instalment, has been received during said calendar year, etc.," will not permit the repeated taking of credits for assumed mortality gains on a One Year Renewable Term Policy. Ruling Ins. Dept., Feb. 25, 1915.

SERVICES.—The services rendered by a farmer in driving an agent about soliciting insurance are not such as are comprehended in § 97; where a policyholder refers to some friend wanting insurance and is paid a bonus for the information, such service is comprehended in the statute. Ruling Ins. Dept., Jan. 24, 1910.

§ 98. Salaries of officers and agents; when fixed by board of directors.

No domestic life insurance corporation shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, firm or corporation unless such payment be first authorized by a vote of the board of directors of such life insurance corporation. No such life insurance corporation shall make any agreement with any of its officers, trustees or salaried employees whereby it agrees that for any services rendered or to be rendered he shall receive any salary, compensation or emolument that will extend beyond a period of twelve months from the date of such agreement. No such corporation shall grant any pension to any officer, director or trustee thereof or to any member of his family after his death.

Source.—Former § 98, as added by L. 1906, chap. 326.

Since the amendments of sections 97 and 98 by chapter 326 of 1906, "Nylie" cannot be continued for agents employed after April 27, 1906. Attorney-General Rep., 1906, page 565.

Salaries of officers of an insurance company must be fixed at least once every year. Ruling Ins. Dept., July 27, 1909.

Under section 98, a domestic life insurance company may establish a pension fund for its employees other than officers and directors, but there must not be any contractual relations between the company and the employees as to a pension fund, that is, no contract may be made or extended with any provision to the effect that the employee shall participate in the pension fund as a consideration for his employment. The pension fund must be voluntary on the part of the company, and established in such manner that it can be discontinued or terminated at any time, and that if so discontinued or terminated, the employee shall have no cause of action against the company. Ruling Ins. Dept., September 30, 1908.

An insurance company may establish a pension fund for employees other than officers and directors. Ruling Ins. Dept., Oct. 1, 1908.

A prohibition as to pensioning officers applies to the president, vice-president, 2nd vice-president, etc., in fact all who are officers established officially by the company's own by-laws. Ruling Ins. Dept., May 17, 1915.

§ 99. Vouchers.

No domestic life insurance corporation shall make any disbursement of one hundred dollars or more unless the same be evidenced by a voucher signed by or on behalf of the person, firm or corporation receiving the money and correctly describing the consideration for the payment, and if the same be for services and disbursements setting forth the services rendered and an itemized statement of the disbursements made, and if it be in connection with any matter pending before any legislative or public body or before any department or officer of any government, correctly describing in addition the nature of the matter and of the interest of such corporation therein, or if such a voucher cannot be obtained by an affidavit stating the reasons therefor and setting forth the particulars above mentioned.

Source.—Former § 99, as added by L. 1906, chap. 326.

§ 100. Investments.

No domestic life insurance corporation, whether incorporated by special act or under a general law, shall invest in or loan upon any shares of stock of any corporation, other than a municipal corporation, nor, excepting government, state or municipal securities,

shall it invest in, or loan upon, any bonds or obligations which shall not be secured by adequate collateral security or where more than one-third of the total value of the collateral security therefor shall consist of shares of stock. Every such corporation which on the first day of June, nineteen hundred and six, owned any shares of stock other than public stocks of municipal corporations whenever the same were acquired, or any bonds or obligations of the kinds above described where said bonds or obligations were acquired after the first day of March, nineteen hundred and six, shall dispose of the said shares of stock and of said bonds and obligations within fifteen years from the thirty-first day of December, nineteen hundred and six, and in each year prior to the expiration of said fifteen years shall make such reduction of its holdings of said securities as may be approved in writing by the superintendent of insurance. No investment or loan shall be made by any such life insurance corporation unless the same shall first have been authorized by the board of directors or by a committee thereof charged with the duty of supervising such investment or loan. No such corporation shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said corporation jointly with any other person, firm or corporation; nor shall any such corporation enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. Any such corporation, in addition to other investments allowed by law, may invest any of its funds in any duly authorized bonds or evidences of debt of any government in which such corporation is transacting business, or of any state, or of any city, county, town, village, school district, municipality or other civil division of any state and may loan upon the security of improved unencumbered real property in any state worth fifty per centum more than the amount loaned thereon. Provided, however, that nothing in this section contained shall be construed as prohibiting a life insurance company from entering into an agreement for the purpose of protecting the interests of the company in securities lawfully held by it, or for the purpose of reorganization of a cor-

poration which issued securities so held, and from depositing such securities with a committee or depositaries appointed under such agreement; but such agreement and the deposit of securities thereunder must first be approved in writing by the superintendent of insurance with a statement of his reasons for such approval. Nor shall this section be construed as preventing such company from accepting corporate stock or bonds or other securities, which may be distributed pursuant to any such agreement approved as aforesaid or to any plan of reorganization approved in writing by the superintendent of insurance with a statement of his reason for such approval. But if any securities so received shall consist in whole or in part of stock in any corporation or of bonds or obligations which shall not be secured by adequate collateral security or where more than one-third of the total value of the collateral security therefor shall consist of shares of stock, then any stock and any such bond or obligation so received shall be disposed of within five years from the time of their acquisition or before the expiration of such further period or periods of time as may be fixed in writing for that purpose by the superintendent of insurance.

Source.—Former § 100, as added by L. 1906, chap. 326, and amended by L. 1908, chap. 9.

Amended by L. 1911, chap. 767; L. 1913, chap. 596, and L. 1916, chap. 121. In effect April 3, 1916.

Note.—The purpose of the amendment of this section by chap. 121 of 1916 extends from ten to fifteen years the time for reducing holdings of bonds and obligations.—Ed.

Note.—The purpose of the amendment of this section by chap. 596 of 1913 was to authorize domestic insurance companies to invest their funds in the bonds of any government in which said corporation is transacting business or of any State and the amendment is in harmony with the general investment section of the Insurance Law (section 16) as amended by chap. 304 of 1913.—Ed.

The Department of Insurance should not admit as a legal investment any amount represented by a second purchase money mortgage held by an insurance company where the first purchase money mortgage previously held by said company has been disposed of. Attorney-General Rep., March 23, 1915.

A domestic life insurance company may invest its surplus moneys in car trust certificates of Pennsylvania Steel Freight Car Trust. Attorney-General Rep., 1906, page 577.

An insurance company holding the stock of two trust companies acquired before chapter 326 of 1906 went into effect, may vote upon the stock so held upon a proposition for the merger of the trust companies; during the period

of ownership permitted by section 100 the title of an insurance company to the stock is perfect and confers upon it the same privileges, responsibilities and duties as those of any other stockholder. *Morse v. Equitable Life Ass. Soc.*, 124 App. Div., 235.

Although section 100, as amended by chapter 326 of 1906, requires life insurance companies to sell their stocks in any corporation before December 31, 1911, yet before that time an insurance company may vote on the stock of two trust companies owned by it. *Morse v. Equitable Life Assur. Soc.*, 124 App. Div., 235.

Sales of stock or corporate obligations by domestic life insurance corporations to parties who pay therefor in part or whole by promissory notes secured by a pledge of such stocks of corporations, are illegal. Attorney-General Rep., March 4, 1908.

Sections 16 and 100, read together, limit the collateral which may be accepted to such securities as the corporation is authorized to invest its surplus funds in. The provision of section 100 that a corporation shall not loan upon any bonds or obligations which shall not be secured by adequate collateral securities applies to those bonds and obligations of private corporations whose issue is based upon the deposit of shares of stock. Ruling Ins. Dept., Sept. 6, 1906.

Mere unsecured additional promises of parties already liable to pay bonds are not collateral security within the meaning of this section. Attorney-General Rep., Aug. 9, 1911.

Railway equipment notes issued under conditional sale agreements for the payment of which a solvent corporation of the United States, or a state, is liable when property issued and sufficiently secured are legal investments under sections 16 and 100 of the Insurance Law, for investing the surplus funds. Attorney-General Rep., June 16, 1913.

The investment in railroad collateral improvement notes is prohibited under the provisions of this section. Ruling Ins. Dept., May 18, 1906.

Life insurance corporations of this state can invest in government bonds of those foreign countries only in which they transact business; the words "adequate collateral security" apply to bonds or obligations of private corporations whose issue is based upon deposit of shares of stock and not mere additional promises of parties already liable. Ruling Ins. Dept., Sept. 6, 1906.

The acquisition by a company, as a consequence of a sale of securities, which must be sold, of certain other securities in which the company must not invest, is an investment under section 100 and rests in the administrative discretion of the Superintendent. Attorney-General Rep., Dec. 16, 1911.

§ 101. Standard provisions.

On and after January first, nineteen hundred and ten, no policy of life or endowment insurance shall be issued or delivered in this state unless and until a copy of the form thereof has been filed with the superintendent of insurance and approved by him; nor shall such policy, except policies of industrial insurance where

the premiums are payable weekly, be so issued or delivered unless it contains in substance the following provisions:

1. A provision that the insured is entitled to a grace either of thirty days or of one month within which the payment of any premium after the first year may be made, subject at the option of the company to any interest charge not in excess of six per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in full force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the current policy year if any are paid, the amount of such premiums, with interest on any overdue premium, may be deducted from any amount payable under the policy in settlement.

2. A provision that the policy shall be incontestable after two years from its date of issue except for nonpayment of premiums and except for violation of the conditions of the policy relating to military or naval service in time of war.

3. A provision that the policy shall constitute the entire contract between the parties, but if the company desires to make the application a part of the contract it may do so provided a copy of such application shall be indorsed upon or attached to the policy when issued, and in such case the policy shall contain a provision that the policy and the application therefor shall constitute the entire contract between the parties.

4. A provision that if the age of the insured has been misstated the amount payable under the policy shall be such as the premium would have purchased at the correct age.

5. A provision that the policy shall participate in the surplus of the company annually.

6. A provision specifying the options to which the policyholder is entitled in the event of default in a premium payment after three full annual premiums shall have been paid.

7. A provision that after three full years' premiums have been paid, the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal

to, or at the option of the owner of the policy less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, less a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provision hereinabove permitted for the deduction from a loan on the policy of a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the entire reserve may be deducted in case of a loan under the policy, or may provide therein that the deduction may be the said two and one-half per centum or the one-fifth of the said entire reserve at the option of the company.

8. A table showing in figures the loan values, if any, and the options available under the policy each year upon default in premium payments, during at least the first twenty years of the policy.

9. In case the proceeds of a policy are payable in installments or as an annuity, a table showing the amounts of the installments or annuity payments.

10. A provision that the holder of a policy shall be entitled to have the policy reinstated at any time within three years from the date of default unless the cash value has been duly paid, or the extension period expired, upon the production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company upon said policy with interest at a rate not exceeding six per centum per annum payable annually.

Any of the foregoing provisions or portions thereof not applicable to single premium or nonparticipating or term policies shall to that extent not be incorporated therein; and any such policy may be issued or delivered in this state which in the opinion of

the superintendent of insurance contains provisions on any one or more of the several foregoing requirements more favorable to the policyholder than hereinbefore required. The provisions of this section shall not apply to policies of reinsurance.

Source.—Former § 101, as added by L. 1906, chap. 326, and amended by L. 1907, chap. 714.

Added by L. 1909, chap. 301, and amended by L. 1911, chap. 369.

Note.—This section, added by L. 1909, chap. 301, substituted for the four standard life policies, the use of which by domestic life companies was previously required, certain standard provisions which will hereafter be used in the policy contracts of all life companies, domestic or foreign, doing business in New York.—Ed.

Policy Forms. Rules — N. Y. Ins. Dept.

“1. *Preliminary filing.* A company should file two fair printer's proof copies of any new policy form for preliminary examination, in order that the form may be given due consideration and any defects therein pointed out and corrected before it is printed for formal submission and filing.

“2. *Formal filing.* When a policy form has been drafted, completed and printed in accordance with the requirements of the statute and of these rules, it should be submitted in triplicate, accompanied by three (3) copies of the application, and the same number of copies of any other supplementary forms which will be necessary parts of the insurance contract.

“3. *Forms to be filled out.* Each policy form, application blank and supplemental form, when thus submitted for formal approval, must be filled out complete, with fictitious names and hypothetical data appropriate to the particular form, so that there will be no blank spaces. In ordinary cases, it is suggested that forms be filled out as of age 35, but in the case of sub-standard risks or rated-up ages forms may be filled out as of age 30 or 35, and rated up to the age required.

“4. *Form number.* Each form of policy submitted to the Department for approval must be designated by a form number printed at the lower left-hand corner of the first page thereof. The form number alone should be sufficient to identify the form and all its printed contents, without reference to the date of the edition or date of printing.

“5. *Descriptive matter.* A brief description of the true nature of the policy should be printed on the first page, at the foot of the page.

“6. *Reserve basis.* The reserve basis, mortality table and rate of interest, used, must be stated in the policy. Usually the reserve basis should be set forth in connection with the non-forfeiture values, but this rule applies to term forms, annuities, and other forms in which non-forfeiture values are not required.

“7. *Surrender charge.* The amount of the surrender charge, if any, must be stated in the policy. It is sufficient to state the maximum amount of the surrender charge, naming the policy year, with the further statement that such surrender charge will decrease until a certain policy year, naming it, after which there will be no surrender charge. The table of loan values must

show the full reserve to cents for those policy years in which, by the terms of the policy, there is no surrender charge, and for the same policy years the term of extended insurance should be shown for years and days.

"8. *Photographic copies of application.* If it is the practice of a company to attach to a policy a photographic reproduction of the application upon which it is issued, the company may attach to each copy of a policy form such photographic copy of the application, filled out with data appropriate to the form, both Part I and Part II, and reproduced full size.

"9. *Purpose of form.* A company is requested to state, when submitting a new policy form, whether it is intended to supersede some form theretofore approved, and if so, the form number of the form to be superseded.

"Indorsement Forms.

"10. *Indorsement stamps.* Forms of indorsements for formal approval should be submitted by means of triplicate impressions of a rubber stamp. A typewritten draft of a proposed form of indorsement may be submitted for examination preliminary to the preparation of the rubber stamp. The rubber stamp should bear a form number at the lower left-hand corner; it should provide a line for the date of execution, and it should show that the indorsement is to be executed in the name of the company by one or more of its executive officers, and their titles should appear on the stamp. The blanks in the impressions of an indorsement stamp should be filled out in the same manner as policy forms and supplementary forms.

"11. *Blank indorsement forms printed on policy.* Certain indorsement forms that are frequently used on life policies may very well be printed on the back of a policy form, ready to be filed in and executed at any time as occasion may arise. Such, for example, are indorsements for changing the beneficiary; changing the time of premium payments; or changing mode of payment of proceeds of policy. Each such blank indorsement form must be designated by an appropriate form number, printed at the lower left-hand corner of the form.

"Rider Forms.

"12. *Rider forms printed.* Rider forms, such, for instance, as those for removing policy restrictions as to residence, or military or naval service, or for reinstatement after lapse, should be printed and submitted in triplicate, with all blanks filled in with hypothetical data appropriate to the case. Each such rider form must be designated by a suitable form number, printed at the lower left-hand corner of the form; it should provide a line for the date of execution, and it should show that it is to be executed in the name of the company by one or more of its executive officers, and their titles should be printed in the rider. The word 'printed' in this rule is used in its ordinary sense, and it does not include work of the mimeograph, multigraph or other styles of duplicating machines."

Forms of contracts based upon persistence, or cessation of a human life or lives, must be filed with and approved by superintendent. Ruling Ins. Dept., July 20, 1909.

Forms of life and endowment insurance and application blanks for delivery after Jan. 1, 1910, and all advertising literature should conform to present law. Ruling Ins. Dept., Aug. 3, 1909.

Policy forms and application blanks should be submitted in triplicate. Ruling Ins. Dept., Dec. 19, 1912.

Application blanks must be completely filled out and filed in triplicate. Ruling Ins. Dept., Aug. 2, 1911.

Photographic copies of application must be reproduced full size. Ruling Ins. Dept., Feb. 25, 1913.

Form number must be printed at lower left-hand corner of first page of policy. Ruling Ins. Dept., May 25, 1911.

Separate form number for each policy form. Ruling Ins. Dept., Jan. 2, 1912.

Place for signatures of officers of policy form is at foot of first page or at end of policy. Ruling Ins. Dept., Oct. 24, 1911.

Only indorsement forms for use with approved policy forms should be submitted. Ruling Ins. Dept., Sept. 25, 1913.

Approved endorsement form covering war conditions. Ruling Ins. Dept., April 29, 1914.

Pure endowments are to be considered as insurance. Ruling Ins. Dept., July 20, 1909.

Standard provisions applicable to children's endowment policies. Ruling Ins. Dept., Sept. 9, 1911.

Companies organized under section 70, subd. 1, may attach to their life insurance policy health insurance riders. Ruling Ins. Dept., Nov. 3, 1909.

Shortening of limitation of claim period in policy form disapproved. Ruling Ins. Dept., Nov. 9, 1909.

Waiver of right to have medical examinations treated as confidential not permissible. Ruling Ins. Dept., Aug. 3, 1909.

Policies delivered in New York State must not be made subject to laws of foreign states. Ruling Ins. Dept., Aug. 3, 1909.

Use of the term "New York State Official Policies" prohibited. Ruling Ins. Dept., Aug. 3, 1909.

Words "renewable-convertible" may be used in term forms. Ruling Ins. Dept., March 31, 1910.

Words "non-renewable," "non-convertible," must be used when term form does not provide for renewal or conversion. Ruling Ins. Dept., Jan. 15, 1913.

Privilege of renewal clause must state whether medical re-examination is required. Ruling Ins. Dept., March 31, 1910.

Use of word "pension" in installment policy disapproved. Ruling Ins. Dept., April 16, 1913.

Aggregate amount of installments and commuted value should be stated on face of installment policy. Ruling Ins. Dept., Jan. 12, 1914.

Commuted value of installment policy and aggregate of installments certain. Ruling Ins. Dept., June 12, 1911.

Installment option riders should not be used concurrently with issue of policy. Ruling Ins. Dept., Nov. 23, 1911.

Waiver of premiums and disability provision may be inserted in policy or used as a rider. Ruling Ins. Dept., Jan. 9, 1912.

Disability clause may be inserted in outstanding policies providing policy does not prohibit its use. Ruling Ins. Dept., Feb. 17, 1914.

Policy form with new provision added must bear new form number. Ruling Ins. Dept., Feb. 26, 1914.

Clause maturing policy at face amount on proof of total disability disapproved. Ruling Ins. Dept., April 27, 1914.

Basis of conversion charge must be stated in policy. Ruling Ins. Dept., Dec. 3, 1913.

Life policy may be assigned to one having no insurable interest and assignee may not be required to furnish proof of interest. Ruling Ins. Dept., July 22, 1914.

Assignee should not be required to furnish proof of interest; different forms of assignment should be used depending on whether assignment is collateral or absolute. Ruling Ins. Dept., Sept. 19, 1914.

Requirements as to applications and beneficiaries in group policies. Ruling Ins. Dept., April 6, 1915.

Employer may not name beneficiary in group policy. Ruling Ins. Dept., April 21, 1915.

Proposed beneficiary clause in group policy. Ruling Ins. Dept., Oct. 9, 1914. Incontestability clause must follow language of statute. Ruling Ins. Dept., Aug. 7, 1909.

Provision making policy incontestable from date of issue contrary to public policy. Ruling Ins. Dept., Feb. 26, 1910.

Provision for incontestability after one year approved. Ruling Ins. Dept., Dec. 10, 1912.

Exception in incontestable clause may not be extended to aviation risks. Ruling Ins. Dept., April 9, 1913.

Date of issue is the date the policy bears for original issues. Ruling Ins. Dept., Nov. 16, 1909.

Words "date of issue" must appear in incontestable clause. Ruling Ins. Dept., Feb. 9, 1911.

Railroad employment clause voiding policy disapproved. Ruling Ins. Dept., Nov. 29, 1913.

Railroad employment; extra hazards should be covered by extra premium. Ruling Ins. Dept., Dec. 11, 1913.

Where application is made part of contract, policy should state that fact. Ruling Ins. Dept., Aug. 3, 1909.

Application not to be printed in policy. Ruling Ins. Dept., Oct. 24, 1911.

Where application is made part of contract, application blank must be filled out and submitted with policy. Ruling Ins. Dept., Jan. 18, 1912.

Policy must contain specific provision for relief in cases of misstatement of age. Ruling Ins. Dept., Aug. 3, 1909.

Misstatement of age provision in annuity contract. Ruling Ins. Dept., Sept. 8, 1909.

Misstatement of age provision may be omitted from industrial policies. Ruling Ins. Dept., April 25, 1912.

Waiver of lapse or forfeiture provisions in application not permissible. Ruling Ins. Dept., Aug. 7, 1909.

Cancellation clause in "wife insurance" policy disapproved. Ruling Ins. Dept., Feb. 1, 1910.

Basis of values should be stated in policy. Ruling Ins. Dept., April 7, 1913.

Dividends may be applied to payment of premiums. Ruling Ins. Dept., Sept. 19, 1912.

Policy loan provision should state a definite rate of interest. Ruling Ins. Dept., Aug. 7, 1909.

Words "at any time" should not be omitted from loan provision. Ruling Ins. Dept., Feb. 29, 1912.

Promissory note must not be taken as additional security for a policy loan. Ruling Ins. Dept., Jan. 4, 1912.

Headings for first column of table of values in life policies are lawful, footnote, when necessary. Ruling Ins. Dept., Nov. 5, 1909.

Loan values in single premium policies must begin first year. Ruling Ins. Dept., Sept. 11, 1912.

When no surrender charge is made, tabular value should be carried to cents, and extended term to days. Ruling Ins. Dept., Dec. 19, 1913.

Policy should contain reinstatement provision. Ruling Ins. Dept., Aug. 3, 1909.

Policy may state that rate of interest on premiums in default shall not exceed six per centum per annum. Ruling Ins. Dept., Nov. 9, 1909.

§ 102. Companies issuing participating policies not to do a nonparticipating business.

No domestic mutual life insurance corporation and no domestic stock life insurance corporation hereafter issuing or professing to issue any participating policies, shall issue any policies, except annuities, which do not by their terms give to the holders thereof full right to participate in the accumulations of said corporation as provided in this chapter. This section shall not apply to paid-up or temporary and pure endowment insurance issued or granted in exchange for lapsed or surrendered policies, nor to policies of reinsurance.

Source.—Former § 102, as added by L. 1906, chap. 326.

Amended by L. 1911, chap. 369

A company can do a participating and non-participating business up to January 1, 1907, and thereafter can only do one form; the company, however, may change from one class of business to another. Attorney-General Rep., 1906, page 539.

Foreign life insurance corporations heretofore licensed may hereafter be licensed if they do both a participating and non-participating business. Attorney-General Rep., 1906, page 549.

Under section 102 of the Insurance Law, "foreign life insurance corporations heretofore licensed may hereafter be licensed if they do both a participating and non-participating business." Ruling Ins. Dep., May 4, 1908.

A domestic stock life insurance company can change from a non-participating to a participating business, but at any particular time must be one or the other. Ruling Attorney-General, June 20, 1906.

Foreign life insurance corporations of other states, heretofore licensed, need not comply with the provisions of this section. Ruling Ins. Dept., January 22, 1908.

There should be no distinction in the application of this law between a mutual life insurance company doing participating business exclusively and a stock company doing a non-participating business exclusively. Opinion of Attorney-General, January 27, 1908.

A life insurance company which issued non-participating policies up to August 11, 1908, at which time it elected to do only a participating business and since that time has issued only participating policies, cannot change from a participating to a non-participating business. Attorney-General's Dec., Sept. 24, 1909.

A stock life insurance corporation of another State, transacting its business exclusively upon a non-mutual basis may be licensed to do business in this State, and thereafter shall issue only non-participating policies. Ruling Ins. Dept., Feb. 1, 1911.

Non-participating company after January 1, 1907, may not use participating forms. Ruling Ins. Dept., Nov. 20, 1906.

Old lapsed participating policy may be reinstated after January 1, 1907. Ruling Ins. Dept., Dec. 13, 1906.

Companies may issue paid-up non-participating policies on deferred dividend forms issued prior to January 1, 1907. Ruling Ins. Dept., Feb. 19, 1907.

Old participating policy may be changed for another form of participating policy. Ruling Ins. Dept., Dec. 13, 1906.

Term "annuities" includes survivorship annuities. Ruling Ins. Dept., Dec. 20, 1906.

Company may make non-participating dividend additions to policies issued prior to 1907. Ruling Ins. Dept., March 12, 1907.

The word "issued" as used in sections 83 and 102 are synonymous with the word "written" as used in section 103. Ruling Ins. Dept., Jan. 8, 1907.

§ 103. Annual reports of life insurance corporations.

In addition to any other matter which may be required by law or pursuant to law by the superintendent of insurance to be stated therein every annual report of every life insurance corporation doing business in the state of New York, made pursuant to section forty-four of this chapter, shall contain an accurate, concise and complete statement of the following matters, to wit: (1) All the real property held by the corporation, the dates of acquisition, the names of the vendors, the actual cost, the value at which it is carried on the company's books, the market value, the amounts expended during the year for repairs and improvements, the gross and net income from each parcel, and if any portion thereof be occupied by the company the rental value thereof, a statement of any certificate issued by the superintendent extending the time for the disposition thereof, and all purchases and sales

made since the last annual statement, with particulars as to dates, names of vendors and vendees, and the consideration. (2) The amount of existing loans upon the security of real property, stating the amount loaned upon property in each state and foreign country. (3) The moneys loaned by the corporation to any person other than loans upon the security of real property above mentioned and other than loans upon policies the actual borrowers thereof, the maturity and rate of interest of such loans, the securities held therefor, and all substitutions of securities in connection therewith, and the same particulars with reference to any loans made or discharged since the last annual statement. (4) All other property owned by the company or in which it has any interest including all securities, whether or not recognized by the law as proper investments, the dates of acquisition, from whom acquired, the actual cost, the value at which the property is carried upon the books, the market value, the interest or dividends received thereon, during the year; also all purchases and sales of property other than real estate made since the last annual statement, with particulars as to dates, names of purchasers and sellers, and the consideration; and also the income received and outlays made in connection with all such property. (5) All commissions paid to any persons in connection with loans or purchases or sales of any property, and a statement of all payments for legal expenses, giving particulars as to dates, amounts and names and addresses of payees. (6) All moneys expended in connection with any matter pending before any legislative body or any officer or department of government, giving particulars as to dates, amounts, names and addresses of payees, the measure or proceeding in connection with which the payment was made, and the interest of the corporation therein. (7) The names of the officers and directors of the company, the proceedings at the last annual election, giving the names of candidates and the number of votes cast for each and whether in person, by proxy or by mail. (8) The salary, compensation and emoluments received by officers or directors and where the same amounts to more than five thousand dollars that received by any person, firm or corporation, with particulars as to dates, amounts, payees and the authority by which the payment was made; also all salaries paid to any repre-

sentative either at the home office, or at any branch office, or agency, for agency supervision. (9) The largest balances carried in each bank or trust company during each month of the year. (10) All death claims resisted or compromised during the year, with particulars as to sums insured, sums paid and reasons assigned for resisting or compromising the same in each case. (11) A complete statement of the profits and losses upon the business transacted during the year and the sources of such gains and losses, and a statement showing separately the margins upon premiums for the first year of insurance ascertained according to the select and ultimate method of valuation as provided in section eighty-four of this chapter and the actual expenses chargeable to the procurement of new business incurred since the last annual statement, as enumerated in section ninety-seven of this article. A foreign corporation, issuing both participating and nonparticipating policies, shall make a separate statement of profits and losses, margins and expenses, as aforesaid, with reference to each of said kinds of business, and also showing the manner in which any general outlays of the company have been apportioned to each of such kinds of business. (12) A statement separately showing the amount of the gains of the company for the year attributable to policies written after December thirty-first, nineteen hundred and six, and the precise method by which the calculation has been made. (13) The rates of annual dividends declared during the year for all plans of insurance and all durations and for ages at entry, twenty-five, thirty-five, forty-five and fifty-five, and the precise method by which such dividends have been calculated. (14) A statement showing the rates of dividends declared upon deferred dividend policies completing their dividend periods for all plans of insurance and the precise methods by which said dividends have been calculated. (15) A statement showing any and all amounts set apart or provisionally ascertained or calculated or held awaiting apportionment upon policies with deferred dividend periods longer than one year for all plans of insurance and all durations and for ages of entry as aforesaid, together with the precise statements of the methods of calculation by which the same have been provisionally or otherwise determined. (16) A statement of any and all reserve or surplus funds held by the com-

pany and for what purpose they are claimed respectively to be held.

(17.) A statement showing all sums of money expended in, or in any way connected with, the election of directors or trustees, with a statement when expended, by whom expended, to whom paid and for what purpose.

Source.—Former § 103, as added by L. 1906, chap. 326, subd. 17, and amended by L. 1907, chap. 623.

Under section 103 the provisions concerning the annual report of an insurance company may not be disregarded, and this section is a direct instruction that every annual statement under this provision shall be complete in itself and without reference to details contained in any prior annual statement. Ruling Ins. Dept., September 23, 1908.

The Superintendent of Insurance has not made and does not contemplate making a rule on the subject of division of expenses under subdivision 12 of this section, it being assumed that the insurance companies will comply with the statute. Ruling Ins. Dep., February 10, 1908.

Accounts should be so kept as to separate repair and improvement items from the other expenses on real estate. Ruling Ins. Dept., Dec. 26, 1906.

Real estate bid in by an insurance company on mortgage foreclosure instituted by it constitutes a purchase of real estate, which should appear in the annual report. Ruling Ins. Dept., Jan. 14, 1907.

All mortgages acquired or disposed of during the year must be included in the annual report. Ruling Ins. Dept., Jan. 23, 1907.

All payments over \$5,000, including payments made to agents in the nature of a commission, must be returned in Schedule G. Ruling Ins. Dept., Jan. 29, 1907.

A company must make return of all salaries paid any representative either at home or at a branch office or agency of the company for agency supervision. Ruling Ins. Dept., Dec. 13, 1906.

Separate statement is required in reporting participating and non-participating business. Attorney-General Rep., Sept. 7, 1906.

A separate statement of profit and loss of participating and non-participating parties must be made by foreign corporations. Ruling Ins. Dept., Sept. 28, 1906.

Separate statement of profit and loss exhibit on participating and non-participating policies not necessary when a foreign company has discontinued use of one form. Ruling Ins. Dept., Jan. 8, 1907.

§ 104. Transfer of deposits by superintendent of insurance to receiver.

In every case where life insurance or annuity companies, or any corporation of either of the classes provided for by this article and article five of this chapter, whether formed under said articles or prior thereto, has been or hereafter may be dissolved, and a re-

ceiver thereof appointed, upon the application of the attorney-general, or by action begun in the name of the people of the state of New York, each and every security and fund which shall have been deposited by such company prior to its dissolution, with the superintendent of the insurance department, for the security and protection of its policyholders or any class of such policyholders, under the statutes in such cases made and provided, may, by an order of the supreme court, made at a special term thereof held within the judicial district in which the principal office of such company was located, prior to its dissolution, upon the application of the attorney-general, after service of eight days' written notice of such application upon the superintendent of the insurance department, be transferred from the said superintendent of the insurance department to the receiver of such company; and thereupon the said superintendent shall deliver such funds and securities to such receiver, and in him the title thereto shall immediately vest. Such receiver shall thereupon convert such securities and funds into money, and shall distribute the proceeds thereof, and of each and every class of such funds or securities among the respective holders of valid policies of such company for whose benefit and security the deposit or deposits were originally made proportionately to the respective valuation of such policies, as shall be ascertained in proceedings taken by such receiver for the valuation of policies, and the determination of the liabilities of such company under the statutes in such cases made and provided, and the course and practice of the supreme court in cases of insolvent corporations, until such valuation shall have been paid in full. If any portion of such proceeds shall then remain, such balance may, under an order of the supreme court in such behalf duly made at special term, be made a part of the general assets of such receivership, and thereupon be distributed by said receiver in payment of or upon the general liabilities of such dissolved company according to law. And in case of a corporation formed under the laws of any other state, doing insurance business in this state of the nature of that done by the corporations above mentioned, in case of any action or proceeding brought or hereafter to be brought in this state by the attorney-general, or in the name of the people of the

state of New York, for the winding up of its business in this state, or for or involving distribution of its assets therein, the same proceedings may be had with reference to any securities and funds deposited by such corporation with the superintendent of the insurance department of this state under the statutes in such case made and provided, as are hereinbefore provided with reference to deposits of corporations of this state, save only that the order for transfer of the deposit may be made in the judicial district in which the principal office of the corporation in this state was located at the commencement of the action or proceedings, or in the third judicial district.

Source.— L. 1884, chap. 285, § 2, as amended by L. 1902, chap. 162, § 1.

§ 105. Powers of certain existing corporations increased.

Every health or casualty company, existing on May thirty-first, eighteen hundred and eighty-nine, formed under the provisions of the second department of section one of chapter four hundred and sixty-three of the laws of eighteen hundred and fifty-three, shall possess the same powers as though it were formed pursuant to said act as amended by chapter three hundred and thirty-eight of the laws of eighteen hundred and eighty-nine.

Source.— L. 1889, chap. 338, § 2.

Section 2 of Laws 1889, chapter 338, was not repealed by the repealing section of the former Insurance Law (L. 1892, chap. 690, § 290), but was specially excepted from repeal. The section conferred upon insurance companies additional powers. It was consolidated and made a part of Article 3 of the present Insurance Law relating to life, health and casualty insurance corporations.

§ 106. Boards of directors to be divided into classes.

Boards of directors of every domestic mutual life insurance corporation, elected under and pursuant to the provisions of laws of nineteen hundred and six, chapter one hundred and twenty-three, as amended by laws of nineteen hundred and six, chapter three hundred and fifty-four, shall divide themselves by lot into two classes as nearly equal as may be, one class to hold office until the annual meeting of the company to be held in accordance with its charter or by-laws in the year nineteen hundred and eight, and the other class to hold office until the annual meeting to be so

held in the year nineteen hundred and nine. There shall be no election of directors at the annual meeting in nineteen hundred and seven. In case of the death or resignation of any director elected in nineteen hundred and six his successor shall be chosen by the board of directors to hold office only until the next election of directors. At the annual meeting in nineteen hundred and eight directors shall be elected for a term of one year in the place of those whose terms of office then expire. At the annual meeting to be held in nineteen hundred and nine, and biennially thereafter, an entire new board of directors shall be elected for the term of two years. The election of directors of every domestic mutual life insurance corporation, whether incorporated by a special act or under a general law, which according to its charter or by-laws would be held prior to the month of April, nineteen hundred and eight, shall be postponed and held on the day in that month corresponding to the day of the month when it would otherwise occur; and the directors of said corporations whose terms would otherwise earlier expire shall continue to hold office until such time and until their successors are elected.

Source.— L. 1906, chap. 123, § 3, as amended by L. 1907, chap. 625, § 1.

Laws 1906, chapter 123, as amended by Laws 1906, chapter 354, provided for the election of new boards of directors of mutual life insurance companies on December 18, 1906. As the object of the act has been attained and the time limited in the first two sections has expired, those sections were eliminated and are repealed as obsolete, but section 3, which provides for a continuance in office of the directors elected under said act until 1908 and 1909, respectively, is consolidated in this section.

§ 107. Standard provisions for accident and health policies.

Subdivision (a). On and after the first day of January, nineteen hundred and fourteen, no policy of insurance against loss or damage from the sickness, or the bodily injury or death of the insured by accident shall be issued or delivered to any person in this state by any corporation organized under article two of this chapter, or, if a foreign corporation, authorized to do business in this state, until a copy of the form thereof and of the classification of risks and the premium rates pertaining thereto have been filed with the superintendent of insurance; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed unless the said superintendent shall

sooner give his written approval thereto. If the said superintendent shall notify, in writing, the company, corporation, association, society or other insurer which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the said superintendent in this regard shall be subject to review by any court of competent jurisdiction, provided, however, that nothing in this section shall be so construed as to give jurisdiction to any court not already having jurisdiction.

Subd. (b). No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the insurer; nor (3) if the policy purports to insure more than one person; nor (4) unless every printed portion thereof and of any endorsements or attached papers shall be plainly printed in type of which the face shall be not smaller than ten point; nor (5) unless a brief description thereof be printed on its first page and on its filing back in type of which the face shall be not smaller than fourteen point; nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply, provided, however, that any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances, shall be printed in bold face type and with greater prominence than any other portion of the text of the policy.

Subd. (c). Every such policy so issued shall contain certain standard provisions, which shall be in the words and in the order hereinafter set forth and be preceded in every policy by the caption, "Standard Provisions." In each such standard provision wherever the word "insurer" is used, there shall be substituted therefor "company" or "corporation" or "association" or "society" or such other word as will properly designate the insurer. Said standard provisions shall be:

(1) *A standard provision relative to the contract which may be in either of the following two forms: Form (A) to be used in policies which do not provide for reduction of indemnity on account of change of occupation, and Form (B) to be used in policies which do so provide. If Form (B) is used and the policy provides indemnity against loss from sickness, the words "or contracts sickness" may be inserted therein immediately after the words "in the event that the insured is injured":*

(A): 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance. No reduction shall be made in any indemnity herein provided by reason of change in the occupation of the insured or by reason of his doing any act or thing pertaining to any other occupation.

(B): 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the insurer's classification of risks and premium rates in the event that the insured is injured after having changed his occupation to one classified by the insurer as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the insurer will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the insurer for such more hazardous occupation.

If the law of the state in which the insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the insurer in accordance with such law, but if such filing is not required by such law then they shall mean the insurer's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the insurer is liable.

(2) *A standard provision relative to changes in the contract, which shall be in the following form:*

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the insurer and such approval be endorsed hereon.

(3) *A standard provision relative to reinstatement of policy after lapse which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; Form (B) to be used in policies which insure only against loss from sickness; and Form (C) to be used in policies which insure against loss from both accident and sickness.*

(A): 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy, but only to cover loss resulting from accidental injury thereafter sustained.

(B): 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy but only to cover such sickness as may begin more than ten days after the date of such acceptance.

(C): 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the insurer or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

(4) *A standard provision relative to time of notice of claim which may be in either of the three following forms: Form (A) to be used in policies which insure only against loss from accident; Form (B) to be used in policies which insure only against loss from sickness, and Form (C) to be used in policies which insure*

against loss from both accident and sickness. If Form (A) or Form (C) is used the insurer may at its option add thereto the following sentence, "In event of accidental death immediate notice thereof must be given to the insurer."

(A): 4. Written notice of injury on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury.

(B): 4. Written notice of sickness on which claim may be based must be given to the insurer within ten days after the commencement of the disability from such sickness.

(C): 4. Written notice of injury or of sickness on which claim may be based must be given to the insurer within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

(5) *A standard provision relative to sufficiency of notice of claim which shall be in the following form and in which the insurer shall insert in the blank space such office and its location as it may desire to designate for such purpose of notice:*

5. Such notice given by or in behalf of the insured or beneficiary, as the case may be, to the insurer at..... or to any authorized agent of the insurer, with particulars sufficient to identify the insured, shall be deemed to be notice to the insurer. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

(6) *A standard provision relative to furnishing forms for the convenience of the insured in submitting proof of loss as follows:*

6. The insurer upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of

loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

(7) A standard provision relative to filing proof of loss which shall be in such one of the following forms as may be appropriate to the indemnities provided:

(A): 7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the date of the loss for which claim is made.

(B): 7. Affirmative proof of loss must be furnished to the insurer at its said office within ninety days after the termination of the period of disability for which the company is liable.

(C): 7. Affirmative proof of loss must be furnished to the insurer at its said office in case of claim for loss of time from disability within ninety days after the termination of the period for which the insurer is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

(8) A standard provision relative to examination of the person of the insured and relative to autopsy which shall be in the following form:

8. The insurer shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

(9) A standard provision relative to the time within which payments other than those for loss of time on account of disability shall be made, which provision may be in either of the following two forms and which may be omitted from any policy providing only indemnity for loss of time on account of disability. The insurer shall insert in the blank space either the word "immediately" or appropriate language to designate such period of time, not more than sixty days, as it may desire; Form (A) to be used in policies which do not provide indemnity for loss of time on ac-

count of disability and Form (B) to be used in policies which do so provide.

(A): 9. All indemnities provided in this policy will be paid
.....after receipt of due proof.

(B): 9. All indemnities provided in this policy for loss other than that of time on account of disability will be paid.....
after receipt of due proof.

(10) *A standard provision relative to periodical payments of indemnity for loss of time on account of disability, which provision shall be in the following form, and which may be omitted from any policy not providing for such indemnity. The insurer shall insert in the first blank space of the form appropriate language to designate the proportion of accrued indemnity it may desire to pay, which proportion may be all or any part not less than one-half, and in the second blank space shall insert any period of time not exceeding sixty days:*

10. Upon request of the insured and subject to due proof of loss accrued indemnity for loss of time on account of disability will be paid at the expiration of each during the continuance of the period for which the insurer is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

(11) *A standard provision relative to indemnity payments which may be in either of the two following forms: Form (A) to be used in policies which designate a beneficiary, and Form (B) to be used in policies which do not designate any beneficiary other than the insured.*

(A): 11. Indemnity for loss of life of the insured is payable to the beneficiary if surviving the insured, and otherwise to the estate of the insured. All other indemnities of this policy are payable to the insured.

(B): 11. All the indemnities of this policy are payable to the insured.

(12) *A standard provision providing for cancellation of the policy at the instance of the insured which shall be in the following form:*

12. If the insured shall at any time change his occupation to one classified by the insurer as less hazardous than that stated in the policy, the insurer, upon written request of the insured and surrender of the policy, will cancel the same and will return to the insured the unearned premium.

(13) *A standard provision relative to the rights of the beneficiary under the policy which shall be in the following form and which may be omitted from any policy not designating a beneficiary:*

13. Consent of the beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary, or to any other changes in the policy.

(14) *A standard provision limiting the time within which suit may be brought upon the policy as follows:*

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

(15) *A standard provision relative to time limitations of the policy as follows:*

15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

Subd. (d). No such policy shall be so issued or delivered which contains any provision (1) relative to cancellation at the instance of the insurer; or, (2) limiting the amount of indemnity

to a sum less than the amount stated in the policy and for which the premium has been paid; or, (3) providing for the deduction of any premium from the amount paid in settlement of claim; or, (4) relative to other insurance by the same insurer; or, (5) relative to the age limits of the policy; unless such provisions which are hereby designated as optional standard provisions, shall be in the words and in the order in which they are hereinafter set forth, but the insurer may at its option omit from the policy any such optional standard provision. Such optional standard provisions if inserted in the policy shall immediately succeed the standard provisions named in subdivision (c) of this section.

(1) *An optional standard provision relative to cancellation of the policy at the instance of the insurer as follows:*

16. The insurer may cancel this policy at any time by written notice delivered to the insured or mailed to his last address, as shown by the records of the insurer, together with cash or the insurer's check for the unearned portion of the premiums actually paid by the insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

(2) *An optional standard provision relative to reduction of the amount of indemnity to a sum less than that stated in the policy as follows:*

17. If the insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the insurer, then in that case the insurer shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

(3) *An optional standard provision relative to deduction of premium upon settlement of claim as follows:*

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

(4) *An optional standard provision relative to other insurance by the same insurer which shall be in such one of the following forms as may be appropriate to the indemnities provided, and in the blank spaces of which the insurer shall insert such upward limits of indemnity as are specified by the insurers' classification of risks, filed as required by this section.*

(A): 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity in excess of \$....., the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

(B): 19. If a like policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of \$..... weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured.

(C): 19. If a life policy or policies, previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for loss other than that of time on account of disability in excess of \$....., or the aggregate indemnity for loss of time on account of disability in excess of \$..... weekly, the excess insurance of either kind shall be void and all premiums paid for such excess shall be returned to the insured.

(5) *An optional standard provision relative to the age limits of the policy which shall be in the following form and in the blank spaces of which the insurer shall insert such number of years as it may elect:*

20. The insurance under this policy shall not cover any person under the age of years nor over the age of years. Any premium paid to the insurer for any period not covered by this policy will be returned upon request.

Subd. (e). No such policy shall be so issued or delivered if it contains any provision contradictory, in whole or part, of any of the provisions hereinbefore in this section designated as "Standard Provisions" or as "Optional Standard Provisions;" nor shall any endorsements or attached papers vary, alter, extend, be used as a substitute for, or in any way conflict with any of the said "Standard Provisions" or the said "Optional Standard Provisions;" nor shall such policy be so issued or delivered if it contains any provision purporting to make any portion of the charter, constitution or by-laws of the insurer a part of the policy unless such portion of the charter, constitution or by-laws shall be set forth in full in the policy, but this prohibition shall not be deemed to apply to any statement of rates or classification of risks filed with the superintendent of insurance in accordance with the provisions of this section.

Subd. (f). The falsity of any statement in the application for any policy covered by this section shall not bar the right to recovery thereunder unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insurer.

Subd. (g). The acknowledgment by any insurer of the receipt of notice given under any policy covered by this section, or the furnishing of forms for filing proofs of loss, or the acceptance of such proofs, or the investigation of any claim thereunder shall not operate as a waiver of any of the rights of the insurer in defense of any claim arising under such policy.

Subd. (h). No alteration of any written application for insurance by erasure, insertion or otherwise, shall be made by any person other than the applicant without his written consent, and the making of any such alteration without the consent of the applicant shall be a misdemeanor. If such alteration shall be made by any officer of the insurer, or by any employee of the insurer with the insurer's knowledge or consent, then such act

shall be deemed to have been performed by the insurer thereafter issuing the policy upon such altered application.

Subd. (i). A policy issued in violation of this section shall be held valid but shall be construed as provided in this section and when any provision in such a policy is in conflict with any provision of this section, the rights, duties and obligations of the insurer, the policyholder and the beneficiary shall be governed by the provisions of this section.

Subd. (j). The policies of insurance against accidental bodily injury or sickness issued by an insurer not organized under the laws of this state may contain, when issued in this state, any provision which the law of the state, territory or district of the United States under which the insurer is organized, prescribes for insertion in such policies, and the policies of insurance against accidental bodily injury or sickness issued by an insurer organized under the laws of this state may contain, when issued or delivered in any other state, territory, district or country, any provision required by the laws of the state, territory, district or country in which the same are issued, anything in this section to the contrary notwithstanding.

Subd. (k). (1) Nothing in this section, however, shall apply to or affect any policy of liability or workmen's compensation insurance or any general or blanket policy of insurance issued to any municipal corporation or department thereof, or to any corporation, copartnership, association or individual employer, police or fire department, underwriters' corps, salvage bureau, or like associations or organizations, where the officers, members or employees or classes or departments thereof are insured for their individual benefit against specified accidental bodily injuries or sickness while exposed to the hazards of the occupation or otherwise in consideration of a premium intended to cover the risks of all the persons insured under such policy.

(2) Nothing in this section shall apply to or in any way affect contracts supplemental to contracts of life or endowment insurance where such supplemental contracts contain no provisions except such as operate to safeguard such insurance against lapse or to provide a special surrender value therefor in the event that the insured shall be totally and permanently disabled by reason of accidental bodily injury or by sickness; provided that no such supplemental contract shall be issued or delivered to any person in this state unless and until a copy of the form thereof has been submitted to and approved by the superintendent of insurance. under such reasonable rules and regulations as he shall make concerning the provisions in such contracts and their submission to and approval by him.

(3) Nothing in this section shall apply to or in any way affect fraternal benefit societies.

(4) The provisions of this section contained in clause (5) of subdivision (b) and clauses (2), (3), (8) and (12) of subdivision (c) may be omitted from railroad ticket policies sold only at railroad stations, or at railroad ticket offices by railroad employees.

Subd. (l). Any company, corporation, association, society or other insurer or any officer or agent thereof, which or who issues or delivers to any person in this state any policy in willful violation of the provisions of this section shall be punished by a fine of not more than five hundred dollars for each offense, and the superintendent of insurance may revoke the license of any company, corporation, association, society or other insurer of another state or country, or of the agent thereof, which or who willfully violates any provision of this section.

Subd. (m). The term "indemnity" as used in this section means benefits promised.

Former § 107, added by L. 1910, chap. 636, repealed by L. 1913, chap. 155.

Added by L. 1913, chap. 155. In effect October 1, 1913.

Note.—The amendment of this section by chapter 155 of 1913 repealed former section 107 and inserted two new sections, numbers 107 and 108, prescribing standard provisions for health and accident policies and prohibiting discriminations. By the terms of section 107, certain standard provisions which must be used by all corporations of this character are made part of the

statute, such provisions having been prepared for the purpose of correcting certain practices found to exist in health and accident insurance business. This law has been approved by the National Convention of Insurance Commissioners.—Ed.

Note.—The purpose of the addition of sections 107 and 108 by chapter 155 of L. 1913, was to correct certain practices found to exist in the health and accident insurance business and to meet some objectionable features of the policy contracts used by this class of corporations by compelling certain standard provisions to be used by all corporations of this character.—Ed.

The holder of a life or accident policy held not to be entitled to the sick indemnity when he had paid the premium when it was past due. *Greenwaldt v. U. S. H. & A. Ins. Co.*, 52 Misc., 353.

§ 108. Discriminations under accident or health policies prohibited.

No insurance corporation authorized to make insurance in this state under subdivision two of section seventy of this chapter, nor any agent of such corporation, shall make or permit any discrimination between individuals of the same class in the amount of premiums, policy fees, or rates charged for any policy of accident or health insurance, or in the benefits payable thereunder, or in any of the terms or conditions of such insurance contract, or in any other manner whatsoever. Any person or corporation violating any provision of this section shall be guilty of a misdemeanor, and shall forfeit to the people of the state the sum of five hundred dollars for each such violation.

Added by L. 1913, chap. 155. In effect October 1, 1913.

Note.—For purpose of addition of this section see note to § 107 ante.

It is not lawful for a company to have in use at the same time two tables of rates for the same class of policies. *Ruling Ins. Dept.*, March 1, 1915.

ARTICLE III.

FIRE INSURANCE CORPORATION.

SECTION 110. Incorporation.

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SECTION 110. Incorporation.

Thirteen or more persons may become a corporation for the purposes of making insurances on dwelling-houses, stores and all kinds of buildings and household furniture, and other property against loss or damage, including loss of use or occupancy, by fire, lightning, windstorm, tornado, cyclone, earthquake, hail, frost or snow, and by explosion whether fire ensues or not, except explosion on risks specified in subdivision seven of section seventy of this chapter, and also against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and of water pipes, and against accidental injury to such sprinklers, pumps or other apparatus, and upon vessels, boats, cargoes, goods, merchandise, freights and other property against loss or damage by all or any of the risks of lake, river, canal and inland navigation and transportation, as well as by any or all of the risks specified in section 150 of this chapter, including insurances upon automobiles, whether stationary or being operated under their own power, which shall include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, and loss by burglary or theft or both, but shall not include insurance against loss by reason of bodily injury to the person, and to effect reinsurance of any risks taken by it, by filing in the office of the superintendent of insurance a declaration signed by all of them of their intention to form a corporation for the purpose of transacting the business of making any or all of such insurances, which shall comprise a copy of the charter proposed to be adopted by them, setting forth the name of the corporation, the place of location of its office, the mode in which its corporate powers are to be exercised and its directors elected, a majority of whom shall be citizens of this state, and if a stock corporation, the owner in his own right of at least five hundred dollars of the stock of the corporation at its par value, the mode of filling vacancies in the office of director, the period for the commencement and termina-

tion of its fiscal year and the amount of capital to be employed in the transaction of its business; provided that a corporation including in its charter a provision to assume any of the risks of ocean marine insurance as specified in section 150 of this chapter must have a capital, paid in in cash, of at least \$400,000.

No such declaration shall be filed, unless the persons signing the same shall have previously published for at least two weeks successively a notice of their intention to form such a corporation in a public newspaper in the county where its office is to be located.

Every such corporation shall be known as a fire insurance corporation. No such corporation shall directly or indirectly deal or trade in buying or selling any goods, wares, merchandise or other commodities whatever, except such articles as may be insured by it, and are claimed to be damaged by any cause so insured against.

Source.—Former § 110, as amended by L. 1907, chaps. 206 and 503; L. 1908, chap. 346; originally revised from L. 1853, chap. 466, §§ 1-2, 4-5, 3, as amended by L. 1873, chap. 851; L. 1861, chap. 92, §§ 1, 2; L. 1880, chap. 452; L. 1882, chap. 218.

Amended by L. 1910, chap. 168; L. 1911, chap. 126 and L. 1913, chap. 296.

Note.—The purpose of the amendment of this section by chapter 296 of 1913 was to give fire insurance corporations all the corporate rights belonging to this class of corporations which are already accorded to them under the laws of other states by adding to those they already possess the right to insure against cyclone, hail, frost, snow and by explosion whether fire ensues or not.—Ed.

Note.—The purpose of the amendment by L. 1910, chap. 168, was to allow a fire company to write ocean marine insurance, also provided in its charter empowered it specifically so to do and it possessed a paid-in capital of \$400,000.—Ed.

The amendment by chap. 206 of 1907 added the words "including insurances upon automobiles whether stationary or being operated under their own power;" the subsequent amendment by chap. 503 of 1907 struck out these words and added the word "earthquakes." The words "including insurances upon automobiles, etc.," were also added to § 150 post by said chap. 206 of 1907.

See § 6, ante. Fees for filing declaration, etc., with superintendent.

See § 10, ante. Certificate of attorney-general; corporate names; number of directors.

See § 11, ante. Examination by superintendent as to capital stock, etc.

See § 12, ante. Minimum capital stock of fire or marine company.

See chap. 733 of 1900. Reincorporation of foreign moneyed corporation.

See chap. 205 of 1903. Fire insurance company for Roman Catholic Diocese of Brooklyn.

It is unlawful for a fire insurance company, engaged in business in this State, to guarantee payment of claims found to be due upon policies of

another fire insurance company doing business in this State. Attorney-General Rep., Sept. 4, 1902.

DOMESTIC ANIMALS.—Only legally organized fire insurance companies can insure against loss of domestic animals by fire. Attorney-General Rep., 1893, page 317.

LLOYDS.—Action against Lloyds under § 1948 of the Code of Civil Procedure for carrying on business. *People v. Loew*, 19 Misc., 248.

SUBSCRIPTIONS.—Section 110 does not require organization papers of a stock insurance company to be accompanied by any subscription for capital stock, and as section 112 provides for opening books for stock subscription, the corporation is created before subscriptions are invited; subscriptions are governed by section 53 (formerly section 51), *Stock Corporation Law*, and are void unless ten per cent be paid. *Van Schaick v. Mackin*, 129 App. Div., 335.

§ 113 of the Insurance Law seems to construe § 110 as solicitous only that the \$200,000 capital be adequately secured, and not as insisting that the precise provisions precedent in § 111, as to doing business in New York and Kings counties, continue in force in a case where the \$200,000 is already held in accumulated profits. Attorney-General Rep., Oct 15, 1913; July 23, 1913.

§ 111. Mutual fire insurance corporations.

No domestic mutual fire insurance corporation shall commence business if located in the city of New York, as said city existed on the first day of October, eighteen hundred and ninety-two, or in the county of Kings, nor establish any agency for the transaction of business in either New York or Kings county, until agreements have been entered into for insurance with four hundred applicants, citizens of this state and freeholders, each owning real estate within this state to the value of at least five thousand dollars, the premiums on which insurance shall amount to two hundred thousand dollars, of which forty thousand dollars shall have been paid in, in cash, and notes of solvent parties, founded on actual and bona fide applications for insurance, shall have been received for the remainder. No such corporation in any other county of the state shall commence business until agreements have been entered into for insurance with at least two hundred applicants, citizens of this state and freeholders, each owning real estate within this state to the value of at least two thousand five hundred dollars, the premiums on which insurance shall amount to one hundred thousand dollars, of which twenty thousand dollars shall have been paid in in cash, and notes of solvent parties, founded on actual and bona fide applications for insur-

ance, shall have been received for the remainder. No one of such notes shall amount to more than five hundred dollars. No two shall be given for the same risk, or be made by the same person or firm, except where the whole amount of such notes shall not exceed five hundred dollars. No such note shall be represented as capital stock unless a policy be issued upon the same within thirty days after the organization of the corporation upon a risk located within this state, and such policy shall be for no shorter period than one year. Such notes shall be called capital stock notes and shall be payable, in part or whole, at any time when the directors shall deem the same requisite for the payment of losses and such incidental expenses as may be necessary for transacting the business of the corporation. The solvency of each of the makers of such notes shall be examined into by the superintendent of insurance, or by one or more competent and disinterested persons specially appointed by him for that purpose. No note shall be received as a capital stock note unless the maker thereof shall be approved by the superintendent of insurance, or by the person or persons appointed by him for that purpose, as being pecuniarily good and responsible for the same, and is also owner of real estate as required by this section, nor until such note has been finally approved by the superintendent of insurance. No such note shall be valid as a capital stock note, unless the corporators or officers of such corporation shall certify under oath that it is the bona fide property of the corporation. No domestic mutual fire insurance corporation transacting business with capital stock notes or deposit notes shall underwrite any property not located within this state, or reinsure policies written upon such property by other insurance corporations.

Source.—Former § 111, as amended by L. 1898, chap. 147; originally revised from L. 1853, chap. 466, § 6, as amended by L. 1862, chap. 367.

See § 12, ante. Minimum capital stock of fire and marine companies. And note that this section, because of the enactment of L. 1913, ch. 92, is now undoubtedly in force.

VIOLATION.—A company which had, when it began business, \$40,000 in cash in the bank, the proceeds of certain sight drafts deposited by it with the bank, being 20 per cent of the \$200,000 worth of premiums referred to in this section, and made by statute a preliminary requirement to the transaction of any business, has not in any manner violated this section. *People v. Equitable Mut. Ins. Corp.*, 1 App. Div., 84.

SPECIAL CHARTERS.—Mutual fire insurance companies doing business in this state under special laws passed prior to chap. 308 of 1849 have the right to transact business according to the terms of their original charter until the same expires. *Attorney-General Rep.*, 1897, page 148.

NOTE GIVEN FOR INSURANCE.—A note given to a mutual insurance company, for premiums in advance, payable “in such portions, and at such time or times, as the directors of the company may, agreeably to their charter and by-laws require,” is in effect payable on demand. *Hill v. Reed*, 16 Barb., 280.

A note constituting part of the capital stock of a mutual insurance company is payable absolutely, may be indorsed and transferred by the corporation at its pleasure, and upon the insolvency of the company may be collected by its receiver. *White v. Haight*, 16 N. Y., 310.

An incorporator of an equitable mutual fire insurance company who gives to the company a capital-stock note, the payment of which is made subject to the conditions of the Insurance Law, and who, upon the incorporation of the company, receives the benefit of the note in the form of a policy of insurance, and becomes one of the directors of the company, and acts in that capacity until the corporation, becoming insolvent, passes into the hands of a receiver, is not in a position to interpose, as a defense to an action brought by the receiver to enforce payment of such note, that because of a failure to comply with the condition imposed by § 111 of the Insurance Law, requiring a specified amount to be paid in cash by the incorporators before the corporation was authorized to commence business, the incorporation was illegal. *Raegener v. McDougall*, 33 App. Div., 231.

The promise to pay expressed in the note and the requirement of § 111 that a policy must be issued within thirty days after the organization of the corporation are independent covenants, and the issuance of the policy within the required time is not a condition precedent to a recovery upon the note. *Raegener v. Hubbard*, 167 N. Y., 301.

A person who agrees with the promoters of a mutual fire insurance company to become a member thereof and delivers a capital-stock note to them may, unless estopped from so doing, withdraw his proposal for insurance and secure the return of his note at any time before the company is actually incorporated and has accepted his proposition. *Raegener v. Brockway*, 58 App. Div., 166.

All the notes of a mutual insurance company constitute its capital stock. *White v. Ross*, 15 Abb. Pr., 66.

An insurance company is not authorized to subscribe to the capital stock of a mutual insurance company, and to agree to give its notes in advance for premiums on insurances to be subsequently effected. *Berry v. Yates*, 24 Barb., 199.

DIVISION OF BUSINESS.—A mutual insurance company may divide its business and risks into distinct departments, or classes, pledging the premiums received in each department as the primary fund for the payment of losses in that department. *Sands v. Boutwell*, 26 N. Y., 233.

CAPITAL.—A mutual fire insurance company cannot insure property in the counties of New York and Kings unless it has complied with the provisions of § 111 of the Insurance Law and has organized with a capital of \$200,000. *Attorney-General Rep.*, 1896, page 190.

§ 113 of the Insurance Law seems to construe § 111 as solicitous only that the \$200,000 capital be adequately secured, and not as insisting that the precise provisions precedent in § 110, as to doing business in New York and Kings counties, continue in force in a case where the \$200,000 is already held in accumulated profits. *Attorney-General Rep.*, 1914, page 78.

Where a receiver is appointed in an insolvent mutual fire insurance company, the outstanding policies of said company are thereupon cancelled by operation of law, and subsequent loss under such policies are not liabilities which may be enforced against the receiver. Attorney-General Rep., July 23, 1909.

INCORPORATION.—Persons who have contracted with a corporation, as such, cannot afterwards raise the objection that the company was not legally incorporated. *White v. Coventry*, 29 Barb., 305.

This section is construed by § 113 as solicitous only that the \$200,000 capital be adequately secured and does not insist that the precise provisions precedent in this section as to doing business in New York and Kings Counties continue in force in a case where \$200,000 is already held in accumulated profits. Attorney-General's Rep., October 15, 1913; July 23, 1913.

§ 112. Subscriptions to capital.

Upon filing in the office of the superintendent of insurance the declaration and copy charter and proof of publication of notice of intention to form a corporation as hereinbefore required, which proof of publication shall be made by the affidavit of the publisher of the newspaper in which the notice was published, or his foreman or clerk, such corporation, if a stock corporation, may open books for subscription to its capital stock and keep the same open until the full amount specified in the charter is subscribed. If it is a mutual insurance corporation, it may open books to receive propositions and enter into agreements and receive capital stock notes in the manner and to the extent specified in this article.

Source.—Former § 112; originally revised from L. 1853, chap. 466, § 7.

See § 53, *Stock Corporation Law*, chap. 564 of 1890. Subscriptions to capital stock.

See § 660, *Penal Law*. Frauds in the organization of corporations.

See § 662 et seq., *Penal Law*. Fraudulent issue of stock, etc.

§ 113. Capital stock notes and deposit notes.

All capital stock notes of any domestic mutual fire insurance corporation shall remain as security for all losses and claims, until the accumulation of profits invested as required by law shall equal the amount of cash capital required to be possessed by stock fire insurance corporations, the liability of each note decreasing proportionately as the profits are accumulated. Any note which may have been deposited with any mutual fire insurance corporation subsequent to its organization in addition to the cash premium on

any insurance affected with such corporation, may, at the expiration of the time of such insurance, be relinquished and given up to the maker thereof or his representative, upon his paying his proportion of all losses and expenses which may have accrued thereon during such term. The directors of any such corporation shall have the right to determine the amount of the note to be given in addition to the cash premium by any person insured therein, but in no case shall the note be more than five times the whole amount of the cash premium, and every person affecting insurance in any mutual fire insurance corporation, and his heirs, executors, administrators and assigns continuing to be so insured, shall thereby become members of the corporation during the period of insurance, and shall be bound to pay for losses and necessary expenses accruing in and to such corporation in proportion to the amount of his deposit note or notes.

Source.—Former § 113; originally revised from L. 1853, chap. 466, § 13, as amended by L. 1854, chap. 369.

PRIVILEGES.—In the matter of certain rights and privileges of mutual fire insurance companies, organized under article III of the Insurance Law of this state, in regard to capital stock and policies. Attorney-General Rep., 1896, page 190.

STATUTE OF LIMITATIONS.—The statute of limitations is not a defense to the makers of a capital-stock note given to a mutual fire insurance company where the statute under which it was given was incorporated in the note by reference thereto. *Raegener v. Medicus*, 32 Misc., 591.

AS BONA FIDE HOLDERS.—Parties receiving from the company capital-stock notes given for the purpose of paying claims and transferred as collateral security are entitled to be protected as bona fide holders to the same extent and under the same circumstances as parties who become owners of such paper. *Brockman v. Metcalf*, 32 N. Y., 591.

NEGOTIABILITY OF NOTES.—The notes are in the hands of the company valid binding notes which the company has a right to negotiate for the purpose of paying claims, or otherwise, in the course of its business, notwithstanding it ultimately appears that some of the subscriptions were not valid binding subscriptions. *Holbrook v. Basset*, 5 Bosw., 147.

Holders of policies in a mutual fire insurance company, who paid their premiums in cash, occupy similar positions to holders of policies who gave deposit notes for such premiums, and under § 115 such policyholder is entitled, upon the cancellation of the policy, to the return of such cash premium. *Raegener v. Willard*, 44 App. Div., 41.

INCORPORATION.—This section construes § 110 as solicitous only that the \$200,000 capital be adequately secured and does not insist that the precise provisions precedent in § 111 as to doing business in New York and Kings Counties continue in force in a case where \$200,000 is already held in accumulated profits. Attorney-General's Rep., October 15, 1913; July 23, 1913.

§ 114. May unite cash capital as an additional security.

Any domestic mutual fire insurance corporation may unite a cash capital to any extent as an additional security to its members, over and above their cash premiums and premium notes. Such cash capital shall not be less than thirty thousand dollars, and shall be invested as capital of stock fire insurance corporations is required to be invested. The corporation may allow interest on such cash capital, and a participation in its profits, and prescribe the liability of the owners thereof to share in the losses of the corporation, and such cash capital shall be liable as the cash capital of the corporation in the payment of its debts. Such cash capital shall in all cases be paid in at the organization of the corporation, and satisfactory evidence of that fact furnished to the superintendent before it shall be authorized to do business.

Any existing joint-stock fire insurance corporation, and any corporation formed under this article, may, upon obtaining the written consent of the holders of three-fourths in amount of its stock, permit the insured to participate in the profits of the business of such corporation, and provide how far any scrip issued to the insured for such profits shall be liable for the losses to be sustained. Whenever an amount not less than one hundred thousand dollars has been accumulated, and scrip issued therefor, the corporation may, with the written consent of the holders of three-fourths in amount of its stock, pay off and cancel an amount of the original cash capital equal to one-half of the accumulated profits, and so may continue from time to time until the whole amount of the original cash capital is paid off. Before any portion of such capital stock shall be so paid off, proof shall be made to the superintendent and certified by him to be satisfactory, that an amount of accumulated profits has been realized, scrip issued therefor, and investments made thereof in the manner required in this chapter, at least equal to double the amount so desired to be paid off and canceled.

Source.—Former § 114; originally revised from L. 1853, chap. 466, § 14.

§ 115. Deposit notes and cash payments by members of mutual corporations.

Every person becoming a member of any domestic mutual fire insurance corporation by affecting insurance therein, shall, before

he receives his policy, deposit his promissory note for such a sum of money as shall be determined by the directors of the corporation. Such part of such note, not exceeding twenty per cent, as shall be required by the by-laws of the corporation, shall be immediately paid, and the remainder of such deposit note shall be payable in whole or in part, as the exigencies of the corporation shall require for the payment of losses by fire and incidental expenses of the corporation. At the expiration of the term of insurance such note, or the part thereof which shall remain unpaid after receiving thereon from the maker a proportionate share for all losses or expenses occurring during such term, shall be relinquished by the corporation to the maker, and the corporation may loan such portion of the money received upon any such note or from any such members as may not be immediately wanted for its use, if the same shall be secured by a bond and a mortgage on unincumbered real property of double the value of the sum loaned.

Source.—Former § 115; originally revised from L. 1848, chap. 205.

PREMIUM NOTES.—A note made and delivered to persons organizing a mutual insurance company, for the purpose of being presented to the commissioners appointed by the comptroller to examine the capital and securities of such company, is a premium note. *Sands v. Campbell*, 31 N. Y., 345.

A note given for premiums on an open policy of insurance to the makers, and afterwards substituted for notes which had been negotiated by the company to the plaintiffs, for the purpose of paying claims, or otherwise, in the course of its business, must be regarded as a note of the character specified in the charter, and the transfer thereof to the plaintiffs by the company was lawful, and the title of the plaintiffs is indisputable. *Wood v. Wellington*, 30 N. Y., 218.

Where the company has negotiated a premium note in the usual course of business, the title thereto is vested absolutely in the indorsee; and any subsequent arrangement which the company may make with the maker of the note in respect to its payment without the assent or knowledge of the indorsee thereof, will not affect his rights, or the rights of a bona fide holder of the same. *Farmer's Bank v. Maxwell*, 32 N. Y., 579.

Where a premium note in advance for the security of dealers was given to a mutual insurance company, at its outset in business, and was renewed at its maturity, the makers were held liable to the receivers of the company in the same manner as if the occasion for its use had arisen during the currency of the original note. *Hone v. Folger*, 1 Sandf., 474.

It is exceedingly doubtful whether the directors of the company, or any agent with authority from them, has power to dispense with a compliance, on the part of persons seeking insurance, of the statutory provisions requiring the giving of deposit or premium notes. *Gibbs v. Richmond Mut. Ins. Co.*, 9 Daly, 203.

The premium note is part and parcel of the contract of insurance, and, with the policy, constitutes the whole of the transaction. One part cannot be cancelled and the other remain in full force, without the consent of both parties. *Campbell v. Adams*, 38 Barb., 132.

A note given to the company for premiums in advance is a valid security, and may be transferred to a party who has insured in the company, on account of a claim for a loss. *Howland v. Myer*, 3 N. Y., 290.

A provision in the policy of a marine insurance company that the amount of the premium note and all other debts to the company should be first paid or secured, before anything should be due upon a loss to the insured, was intended primarily for the protection and security of the company; but that it also created the reciprocal obligation that the company should not demand payment of the note until they had paid losses. *Osgood v. De Groot*, 36 N. Y., 348.

A note is valid by force of the statute authorizing it to be taken and, therefore, that a partial failure of consideration cannot be set up to defeat a recovery of the full amount. *Deraismes v. Merchants' Mut. Ins. Co.*, 1 N. Y., 371.

Holders of policies in a mutual fire insurance company, who paid their premiums in cash, occupy similar positions to holders of policies who gave deposit notes for such premiums, and under § 115, providing that the maker of a deposit note shall be only liable for losses occurring during the term of the insurance, a policyholder who has paid the premium in cash is entitled, upon the cancellation of the policy, to the return of a proportion of such cash premium. *Raeger v. Willard*, 44 App. Div., 41.

PREMIUM NOTES; STATUTE OF LIMITATIONS.—A premium note is to be regarded according to its legal import, and not according to its form; the statute of limitations applies to such a note according to its legal import and, if a note is made payable at the end of or within twelve months from its date, will commence running at the end of a year from the date thereof. *Bell v. Yates*, 33 Barb., 627; *Sands v. St. Johns*, 36 Barb., 628.

The fact that an assessment has already been made upon a premium note which still remains unenforced, will not render a second assessment upon the note, embracing the former one, and designed to accomplish the same purpose, invalid, where no question arises as to the statute of limitations. *Sands v. Sweet*, 44 Barb., 108; overruling *Campbell v. Adams*, 38 Barb., 132.

A note given to a mutual insurance company to make up its capital is, in legal effect, payable on demand, i. e., at its date, though by its terms payment was to be made at such times and in such portions as the directors might require; no actual demand is necessary in respect to such a note; the statute of limitations begins to run against such a note at the time it is given. *Howland v. Edmonds*, 24 N. Y., 307; *Osgood v. Straus*, 55 N. Y., 672.

On a promissory note given as a contingent guaranty and payable according to assessments to be made after other assets are exhausted, the statute of limitations does not begin to run until that contingency occurs. *Hope Ins. Co. v. Perkins*, 2 Abb. Ct. of App., 383.

DEFENSE TO PAYMENT OF NOTE.—It is no defense to an action on a note that the losses, to the payment of which the money may be applied when collected, have occurred after the expiration of the period for which the

maker of the note was insured, or that no assessment was made in respect to such losses upon other notes given to the company. *White v. Haight*, 16 N. Y., 310.

Where a stock subscription note, payable to the order of a mutual insurance company, is indorsed by its president and negotiated, and before its maturity is taken by a third person in good faith, and for full value in the usual course of business, and it appears that this is a common mode of negotiating its notes, such holder acquires a good title. *Merchants' Bank v. McColl*, 6 Bosw., 473.

Where, in an action by a foreign insurance corporation upon a note, it only appears that it was created to effect insurance upon lives, and that the note was executed to it for the premium on a policy of insurance issued by it, it will be presumed that the insurance was such as the company was authorized to make and that the note was legal, until the contrary appears. *Mut. Benefit L. Ins. Co. v. Davis*, 12 N. Y., 569.

§ 116. Assessments in mutual corporations.

The directors shall, as often as they deem necessary, after receiving notice of any loss or damage by fire sustained by any member, and ascertaining the same, or after the rendition of any judgment against the corporation for loss or damage, settle and determine the sums to be paid by the several members thereof as their respective portion of such loss, and publish the same in such manner as they shall see fit or as the by-laws shall have prescribed. The sum to be paid by each member shall always be in proportion to the original amount of his note or notes, and shall be paid to the officers of the corporation within thirty days next after the publication of such notice. If any member shall, for the space of thirty days after such publication and after personal demand for payment shall have been made, neglect or refuse to pay the sum so assessed upon him, the directors may sue for and recover the whole amount of his note or notes, with costs of suit, but execution shall only issue for assessments and costs as they accrue, and every such execution shall be accompanied by a list of the losses for which the assessment is made.

If the whole amount of notes shall be insufficient to pay the loss occasioned by any fire or fires, in such case the sufferers insured by the corporation shall receive, toward making good their respective losses, a proportional share of the whole amount of such notes according to the sums by them respectively insured. No member shall ever be required to pay for any loss occasioned by fire or inland navigation more than the whole amount of his note. Any

such corporation may receive from any person applying for insurance, in lieu of a deposit note, the whole amount in cash for the premium therefor, without subjecting such person to any other or additional liability. or in any way impairing or changing the obligation of the corporation or affecting the rights of any person interested therein.

Source.—Former § 116; originally revised from L. 1853, chap. 466, § 13, as amended by L. 1854, chap. 369; L. 1890, chap. 302.

OBLIGATION OF MEMBER.—The obligation imposed by the statute upon a member is merely that he shall pay his *pro rata* share of any losses, and he does not indemnify the insured against a deficiency arising out of the insolvency of a member, nor does he incur any obligation to pay the proportion of any other member who has become insolvent, or who is, from any cause, unable to pay his proportionate share of the loss. *Pratt v. Dwelling House Mut. Co.*, 7 App. Div., 544.

A member of a mutual company is liable upon his deposit note for losses in the proportion which the amount of his note bears to the aggregate of deposit notes which are collectible and legally subject to assessments for such losses. *Bangs v. Gray*, 12 N. Y., 477.

One insured in a mutual company continues liable to assessment upon his premium note for any losses incurred during the term specified in his policy, although his property insured be destroyed long previous to its expiration. *Bangs v. Skidmore*, 21 N. Y., 136.

Notwithstanding that a policy be regarded as absolutely void by reason of an unauthorized assignment, the assured is not released from the obligations of his deposit or premium note until all assessments are paid. *Hyatt v. Wait*, 37 Barb., 29.

Besides his indebtedness for the amount of an assessment already made, the maker of a premium note is also liable to pay his just proportion of the losses of the company occurring while his policy is in force, for which no assessment has yet been made. *Sands v. Hill*, 42 Barb., 651.

ASSESSMENT.—The fact that an assessment made upon a premium note includes ten per cent for expenses, besides losses, does not render the assessment irregular and void. *Hyatt v. Esmond*, 37 Barb., 601.

The assessment of a premium note is but the performance of a ministerial duty, and is therefore not final; the fact that an assessment has already been made upon a premium note, which still remains unenforced, will not render a second assessment upon the note, embracing the former one, and designed to accomplish the same purpose, invalid. *Sands v. Sweet*, 44 Barb., 108.

The power of the receiver of a mutual fire insurance company to levy an assessment upon the makers of capital stock notes, to meet the company's liabilities, is not judicial in its nature, and can be exercised only where the circumstances render it necessary and proper. *Raegenar v. Willard*, 44 App. Div., 41.

The directors of a mutual insurance company do not act judicially in making assessments upon premium notes; the directors have no right to take into consideration the length of time any person has been a member, in determining the amount of his assessment, or whether he shall be assessed at all. *Herkimer Co. Mut. Ins. Co. v. Fuller*, 14 Barb., 373; 7 How. Pr., 210.

An assessment is a necessary condition to the maintenance of an action by the receiver of a mutual insurance company upon a premium note, where the charter and by-laws do not otherwise provide. *Savage v. Medbury*, 19 N. Y., 32.

A general assessment, and notice that each premium note of every class is assessed for the full amount thereof, is sufficient where the losses in the class to which the note belonged exceed the amount of all the notes received upon that class of risks, and the losses of the company exceed what is collectible on all the notes of all classes and dates; it is unnecessary that the assessment should state the particulars of the assets and debts upon which it is founded. *Sands v. Sanders*, 26 N. Y., 239.

NON-ASSESSABLE POLICY.—A mutual company may issue a non-assessable policy for cash and the insured may recover thereon against a permanent receiver of the company for a loss which occurred after the appointment of a temporary receiver. *People v. Highland Mut. Co.*, 26 Misc., 205.

All parties insured are members of the corporation and entitled to share in its profits of its business; the contingent benefit thus secured by taking out a policy for a cash premium is sufficient to constitute the insured an insurer to the extent of his interest, and to bring the transaction within the principle of mutuality. *Mygatt v. N. Y. Prot. Ins. Co.*, 21 N. Y., 52.

Holders of policies in a mutual fire insurance company, who have paid a certain definite sum of money in full for insurance therein, in lieu and in place of a premium note therefor, are as fully and effectively insured as those who have given a premium note for insurance, and are members of the company and entitled to vote at any election of its directors equally with note policyholders. *Matter of Mut. Fire Ins. Co.*, 164 N. Y., 10.

INSUFFICIENT NOTICE.—Where the notice of assessment specified different rates of assessment for "small notes" and "large notes," without showing in any manner how a given note was distinguishable as belonging to one or the other class, and there was no evidence of any rule on the subject contained in the charter or by-laws, the notice was held inoperative for uncertainty. *Bangs v. Duckinfield*, 18 N. Y., 592.

The notice of assessment should state the amount which each member is to pay; otherwise it will be insufficient and defective, and will not oblige the members to pay, or subject them to a suit upon the premium note. *Bangs v. McIntosh*, 23 Barb., 591.

Where the by-laws of the company require a notice of the assessment to be published, unless such publication is shown a failure to pay an assessment is unavailable as a defense to an action on a policy. *Bodle v. Chenango Co. Mut. Ins. Co.*, 2 N. Y., 53.

The publication in the absence of by-laws is to be made according to the discretion of the directors; but where by-laws prescribe the method of publication their directions must be followed, and a defect therein is not aided by proof of a personal demand. *Sands v. Shoemaker*, 4 Abb. Ct. of App., 149; 2 Keyes, 268.

The publishing of the notice is not merely directory, and personal notice to a party assessed is not equivalent to, nor does it dispense with publication. *Sands v. Groves*, 58 N. Y., 94.

COUNTERCLAIM.—A member of a mutual marine insurance company cannot, upon its insolvency, set off against his indebtedness for premiums due upon policies a loss sustained by him, adjusted and payable by the company. *Laurence v. Nelson*, 21 N. Y., 158.

ACTION ON NOTE.—In an action upon a premium note is it unnecessary to show the particular loss for the payment of which the assessment is made. *Jackson v. Roberts*, 31 N. Y., 304.

The premium notes given to and held by a mutual insurance company are liable to pay losses arising under cash policies issued by the company. *White v. Havens*, 20 How. Pr., 177.

DISCRIMINATION.—In making an assessment no discrimination is to be made between notes given when higher rates of insurance existed and those under reduced rates. *Shaughnessy v. Rensselaer Ins. Co.*, 21 Barb., 605.

RECEIVER.—A receiver, in making an assessment upon premium notes held by the company, is the actor, and his authority depends, not upon the order of the court, but upon the existence of facts rendering an assessment necessary and proper. *Thomas v. Whallon*, 31 Barb., 172.

INTEREST.—A personal demand of the amount assessed upon a premium note must be made before an action can be brought against the maker; upon a recovery on such a note, for the non-payment of assessments, the plaintiff is entitled to interest from the time when the assessments became payable. *Sands v. Annesley*, 56 Barb., 598.

In an action to recover an assessment on a premium note given on effecting an insurance, the plaintiff is not entitled to interest on the amount of the note. *Bangs v. Bailey*, 37 Barb., 630.

REVIVAL OF POLICY.—In an action on a policy issued by a mutual company it appeared that the company, with full knowledge that the policy had become void by an alienation of the property insured, assessed the plaintiff's premium note on account of losses which occurred after the alienation, and collected the assessment; held, that this did not revive the policy, but was consistent with the right of the company to treat it as void. *Neely v. Onondaga Co. Mut. Ins. Co.*, 7 Hill, 49.

When a policy has become void by reason of an unlawful assignment it will not be revived because the company, with full knowledge, assessed the assured for losses. *Smith v. Saratoga Co. Mut. Fire Ins. Co.*, 3 Hill, 508.

FORCE OF ADJUSTMENT.—The amount to be paid by the insured, if anything, toward previous losses on a surrender of a deposit note is a subject

of adjustment between him and the company, and when the adjustment is made and the policy and note are surrendered the settlement is binding unless impeached on the ground of fraud or mistake. *Hyde v. Lynde*, 4 N. Y., 387.

TERMINATION OF CHARTER.—The fact that a charter of an insurance company expires, by its own limitation, within the period during which a policy is by its terms to continue will not avoid the policy, and discharge the insured from his liability upon his premium note; the policy is valid for the unexpired term of the charter. *Huntley v. Beecher*, 30 Barb., 580.

EXECUTION.—In an action on a premium note a recovery may be had for its full amount although that exceeds the assessment levied against it, but execution can only issue for the amount due thereon. *Taylor v. Port Jefferson Mill. Co.*, 84 Hun, 610; 32 N. Y. Supp., 307; 65 St. Rep., 542.

§ 117. How surplus profits to be estimated.

In estimating the surplus profits of a fire insurance corporation for the purpose of making any dividend upon its capital stock, there shall be reserved from such profits a sum equal to the amount of all unearned premiums on unexpired risks and policies, and all sums due the corporation on bonds and mortgages, bonds, stocks and book accounts, of which no part of the principal or interest thereon has been paid during the last year, and for which foreclosure or suit has not been commenced for collection or which, after judgment obtained thereon, shall have remained more than two years unsatisfied, and on which interest shall not have been paid, and all interest due or accrued and remaining unpaid. But no corporation may declare dividends exceeding ten per centum on its capital stock in any one year unless, in addition to the amount of its capital stock such dividend, all outstanding liabilities and the amount of all unearned premiums on unexpired risks and policies as aforesaid, it shall have and be in possession of surplus profits to an amount equalling thirty per centum of its unearned premiums.

Any dividend made contrary to the provisions of this section shall work a forfeiture of the charter of the corporation, and each stockholder receiving any such dividend shall be liable to the creditors of the corporation to the extent of the dividend received in addition to the other penalties and punishments prescribed by law. This section shall not apply to the declaration of scrip dividends by participating corporations. No such scrip dividends shall be paid except from the surplus profits, after reserving all sums as above

provided, including the whole amount of unearned premiums on unexpired risks. And whenever any fire insurance corporation shall have accumulated and be in possession of a fund in addition to the amount of its capital stock, and all actual outstanding liabilities in excess of one-half of the amount of all premiums on risks not terminated such corporation may increase its capital stock from such fund; and distribute such increase pro rata to the stockholders of such corporation, provided, always, that such increase shall be equal to at least twenty-five per centum of the original capital stock of said corporation and shall have been approved by the superintendent of the insurance department and authorized by at least three-fourths of the board of directors of such corporation, and provided, also, that any such corporation may hereafter make and declare a dividend as provided by this chapter.

Source.—Former § 117, as amended by L. 1905, chap. 251; originally revised from L. 1853, chap. 466, § 12, as amended by L. 1867, chap. 91.

See § 28, Stock Corporation Law, chap. 61 of 1909. Liability of directors for making unauthorized dividends.

See § 664, Penal Law. Misconduct of directors in making dividend except from surplus profits.

DIVIDENDS.—Dividends upon the capital stock of a fire insurance corporation can only be paid from surplus earnings. Attorney-General Rep., 1894, page 212.

Section 117 of the Insurance Law does not prohibit all insurance companies from declaring dividends exceeding ten per centum. Attorney-General Rep., 1901, page 148.

Where the capital of a fire insurance company is impaired, all dividends paid stockholders, except those declared from surplus profits, must be returned by the directors. Attorney-General Rep., June 25, 1895.

The provision of this section declaring, in effect, that moneys received for premiums upon unexpired fire insurance policies shall not be deemed surplus profits, but shall be considered as "unearned premiums" in making dividends, does not affect the status of such receipts, as property, for the purposes of taxation, and in no way interferes with or affects the statute in relation to taxation. *People ex rel. M. F. Ins. Co. v. Commissioners*, 76 N. Y., 64.

§ 118. Allowance of assets and estimation of liabilities upon examinations.

When an examination is made by the authority of the superintendent of insurance into the affairs of any fire insurance corporation doing business in this state, or when such corporation

renders a statement to the insurance department, there shall not be allowed as assets any investments which are not held as prescribed by law at the date of such examination or rendering such statement; but unpaid premiums on policies written within three months shall be admitted as available resources. In estimating its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premiums on the policies in force, calculated on the gross sum without any deduction on any account, charged to the policyholder on each respective risk from the date of the issue of the policy. In the case of an examination into the condition of any mutual fire insurance corporation with capital stock notes, the value of such notes shall be ascertained and the responsibility of the makers thereof certified to in the same manner as is required by section one hundred and eleven of this chapter.

Source.—Former § 118, as amended by L. 1898, chap. 465; originally revised from L. 1880, chap. 110, § 1.

See § 130, post. Guaranty and special reserve funds.

VALUATION OF POLICIES.—The superintendent of insurance, in making a valuation of the policies of a foreign fire insurance company, should value only such policies as are issued by said company and are outstanding and in force in this country. Attorney-General Rep., 1893, page 417.

CONTINUANCE IN BUSINESS.—The question as to the continuance in business of a mutual insurance company is to be determined by the superintendent under § 43 of the Insurance Law, and § 118 applies only in part to a mutual insurance company. People ex rel. Long Island Mut. v. Payn, 28 App. Div., 584; 50 N. Y. Supp., 334.

§ 119. Liability of directors and corporators.

The directors and corporators of any corporation organized under this article, and those entitled to a participation of the profits of such corporation, shall be jointly and severally liable for all debts or liabilities of such corporation, until the whole amount of the capital of the corporation shall have been paid in in cash, and a certificate has been issued to it by the superintendent authorizing it to do business in this state.

Source.—Former § 119; originally revised from L. 1853, chap. 466, § 17.

DIRECTOR.—It seems that a director of a fire insurance company has no right to approve of his own application. Pratt v. D. H. M. F. Ins. Co., 130 N. Y., 206.

CORPORATIONS.—Corporators, as used in this section, does not include stockholders; corporators are the associates engaged in organizing the company, whose functions cease with its organization, then stockholders come in; after their functions thus cease the corporators cannot be further held liable; where a corporator is liable under this section the cause of action, upon his death, survives against his estate. *Chase v. Lord*, 77 N. Y., 1.

§ 120. What to appear on face of policy.

Every domestic mutual fire insurance corporation shall embody the word “mutual” in its title, which shall appear on the first page of every policy and renewal receipt. Every fire insurance corporation doing business as a cash stock corporation shall upon the face of its policy in some suitable manner express that such policy is a policy in a stock corporation.

Source.—Former § 120; originally revised from L. 1853, chap. 466, § 15.

§ 121. Standard fire insurance policy to be prescribed and used.

The printed blank form of a contract or policy of fire insurance, with such provisions, agreements or conditions as may be indorsed thereon or added thereto and form a part of such contract or policy, heretofore filed in the office of the secretary of state by the superintendent of insurance or by the New York board of fire underwriters pursuant to the provisions of chapter four hundred and eighty-eight of the laws of eighteen hundred and eighty-six shall be transferred by the secretary of state to the office of the superintendent of insurance and, together with such provisions, agreements or conditions as may be filed by the New York board of fire underwriters in the office of the superintendent of insurance and approved by him, which provisions, agreements or conditions shall be void if they are inconsistent with the standard fire insurance policy heretofore filed in the office of the secretary of state, shall be known and designated as the “standard fire insurance policy of the state of New York.” No fire insurance corporation, its officers or agents, shall make, issue, or deliver for use, any fire insurance policy or the renewal of any such policy on property in this state, other than such as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with such printed blank form of contract or policy; and no other

or different provision, agreement, condition or clause shall be in any manner made a part of such contract or policy or indorsed thereon or delivered therewith, except as follows, to wit:

First. The name of the corporation, its location and place of business, date of its incorporation or organization, whether it is a stock or mutual corporation, the names of its officers, the number and date of the policy, and if issued through a manager or agent the words "this policy shall not be valid until countersigned by the duly authorized manager or agent of the corporation at."

Second. Printed or written forms of description and specification, or schedules of the property covered by any particular policy, and any other matter necessary to clearly express all the facts and conditions of insurance on any particular risk not inconsistent with or a waiver of any of the conditions or provisions of the standard policy herein provided for.

Third. With the approval of the superintendent of insurance, if the same is not already included in such standard form, any provision which any such corporation is required by law to insert in its policies, not in conflict with the provisions of such standard form. Such provisions shall be printed apart from the other provisions, agreements or conditions of the policy under a separate title as follows: "Provisions required by law to be stated in this policy."

After the first day of January, 1911, such policy or contract may be printed, written or typewritten with any size of type or on any size or shape of paper which shall have the written approval of the superintendent of insurance.

The name, with the word "agent" or "agents," and place of business, of any insurance agent or agents, either by writing, printing, stamping or otherwise, may be indorsed on the outside of such policies.

Two or more fire insurance corporations, authorized to transact business in this state, may issue a combination standard form of policy, using a distinctive title therefor, which title shall appear at the head of such policy followed by the titles of the several corporations obligated thereupon, and which policy shall be executed by the officers of each of such corporations; provided, that

before such corporation shall issue such combination policy, they shall have received the express permission of the superintendent of insurance to issue the same, and the title of such proposed policy and the terms of the additional provisions thereof, hereby authorized, shall have been approved by him, which terms, in addition to the provisions of the standard policy and not inconsistent therewith, shall provide substantially under a separate title therein, to be known as "Provisions specially applicable to this combination policy," as follows: (a) That each corporation executing such policy shall be liable for the full amount of any loss or damage, according to the terms of the policy, or a specific percentage thereof; (b) that service of process, or of any notices required by the said policy, upon any of the corporations executing the same shall be deemed to be service upon all; and provided, further, that the unearned premium liability on each policy so issued shall be maintained by each of such corporations on the basis of the liability of each to the insured thereunder.

Source.—Former § 121, as amended by L. 1901, chap. 513; L. 1903, chap. 106; originally revised from L. 1886, chap. 488, §§ 1, 2, 4, as amended by L. 1887, chap. 429.

Amended by L. 1909, chap. 240; L. 1910, chaps. 168, 638 and 668, and L. 1913, chap. 181. In effect June 30, 1913.

Note.—The purpose of the amendment of section 121 and addition of section 121-a by chapter 191 of 1913 was to require after June 30, 1913, every fire insurance policy to have a notice attached to it providing for appeal, and also to allow the New York Board of Fire Underwriters to submit to the superintendent new riders which if approved can be used in connection with the standard fire policy.—Ed.

Note.—The Lloyds bill — chap. 638 of 1910 — and the combination standard fire policy bill — chap. 668 of 1910 — both amend § 121. The amendment, as found in the latter bill, is the more comprehensive and is in accordance with the Department's desires. The Lloyds bill was signed June 24th, and the combination standard fire policy bill June 25th. Though both statutes go into effect on the same day, the intent of the legislature and the Executive will doubtless be determined by these dates. The section is here printed as amended by chap. 668 of 1910.—Editor.

Laws 1903, chapter 106, section 1, by its terms purported to amend section 190 of Laws 1892, chapter 690. This was an error, as there was no section 190 in the latter act. The substance of the amending act shows clearly that it was intended to amend section 121.

See § 1193, Penal Law. Fire insurance corporations to use standard policy only.

VERBAL CONTRACT.—Where a local agent of a fire insurance company, after a conversation with an applicant for fire insurance in which the sum for which the property was to be insured, the premium and the period of insurance were discussed and fixed, stated to the applicant that "You are insured from noon of the 30th day of December, 1893, to noon of December 30, 1894," a complete and binding contract for insurance for the period stated is created, and the law reads into the contract the standard fire insurance policy of the state of New York, whether it was referred to in terms or not. *Hicks v. British Am. Assur. Co.*, 162 N. Y., 284.

CONTRACTUAL LIMITATION.—The contractual limitation is a part of the standard form of insurance policies issued in this state pursuant to statute, and unless the defendant has waived the limitation or it is estopped from asserting the same it is a complete defense to an action; an insurance company may waive the limitation or estop itself from asserting it. *McArdle v. German All. Ins. Co.*, 98 App. Div., 594.

INDORSEMENT.—The standard form cannot properly contain or bear upon its face an indorsement in the form of an agreement signed by the agent undertaking to relieve the assured from any and all assessments which may be made by the company against the assured under said policy. In *re Mutual Fire Ins. Co.*, Attorney-General Rep., 1902, page 234.

The indorsement upon or delivery with a standard fire insurance policy of a notice to the effect that unless the premium is paid on or before a specified date, the company will exercise its rights of cancellation as provided by the policy, is not a violation of the provisions of § 121 of the Insurance Law or of § 577d of the Penal Code. In *re Clinton*, Attorney-General Rep., 1902, page 241.

DEPOSIT OF PROOFS.—Depositing proofs of loss by fire in the post-office sixty days after the fire, which proofs are not received by the company until the sixty-second day, is not a compliance with the conditions of a policy requiring that the insured shall render a statement to the attorneys of underwriters within sixty days. *Peabody v. Satterlee*, 166 N. Y., 174.

There is a sufficient compliance with the provisions of a fire insurance policy requiring the insured to give the insurer "immediate" notice of a loss if the insured, using due diligence, serves the notice within a time which is reasonable under the circumstances; the question of due diligence under the circumstances of the case is for the jury. *Will & Baumer Co. v. Rochester German Insurance Co.*, 140 App. Div., 691.

CHANGE OF INTEREST.—Where a policy contained a condition declaring it void in case of any change of interest, title or possession, whether by legal process or voluntary act, the issuing of an execution and a levy thereunder does not work a change of interest within the meaning of the policy. *Walradt v. Phoenix Ins. Co.*, 136 N. Y., 375.

NON-OCCUPANCY.—Permit for non-occupancy limiting company's liability to two-thirds of the amount insured in the policy, etc., not "inconsistent with" nor "a waiver of any of the conditions or provisions of the standard policy." Attorney-General Rep., 1903, page 281.

COLD STORAGE RIDERS.—§ 121 prohibits the making of a policy which would insure against indirect loss or consequential damages; "cold storage" riders are not permissible. Attorney-General Rep., 1902, page 351.

A rider attached to a policy of insurance, stating that it is issued upon the understanding and warranty by the insured that another certain company has a policy in force insuring the identical property in identically the same proportions and at no higher rate of premium is within the second exception of section 121; where the policy referred to in the rider was in fact written at a higher rate of premium and the proportions were not identical, the policy to which the rider is attached is void for the breach of the warranty; an insurance broker, procuring the policy to which the rider it attached, is liable to the insured where its invalidity arose from his negligence. *Scharles v. N. Hubbard, Jr. & Co.*, 74 Misc., 72.

BINDING SLIP.—Where defendant, in order to provide temporary insurance pending an inquiry as to the character of the risk, delivered to plaintiff a “binding slip,” containing none of the conditions found in the policies, the plaintiff was not entitled to recover when the loss occurred two hours after plaintiff had been notified that defendant would not accept the risk; the contract evidenced by the “binding slip” was one subject to the conditions contained in an ordinary policy, and the notice terminated the contract pursuant to such a condition in the policy. *Lipman v. N. F. Ins. Co.*, 121 N. Y., 454.

When a fire insurance company signs and delivers to an insurance broker employed to procure insurance what is known as a “binding slip,” agreeing to make the insurance, the slip to be binding until a regular policy is made out and delivered, the contract evidenced by the slip is the ordinary policy issued by the company. *Karelsen v. Sun Fire Off.*, 122 N. Y., 545.

It is proper to issue a binder for temporary insurance pending an inquiry by the company as to the character of the risk or during any delay in issuing the policy. In *re N. Y. Fire Ins. Exchange*, Attorney-General Rep., 1904, page 416.

SURRENDER OF CERTIFICATE.—It is not a violation of the provisions of § 121 to issue a policy that the applicant has insurance “Loss, if any, in conformity with the conditions of said policy to be adjusted on presentation and surrender of this certificate.” Attorney-General Rep., 1904, page 430.

MORTGAGED PREMISES.—When, by a policy of fire insurance issued to the owner of mortgaged premises, loss, if any, is made payable to the mortgagee, as his interest may appear, the undertaking so to pay is collateral and dependent upon the principal undertaking, and if there is a breach of conditions in the policy by the assured, which by its terms renders it void, this defeats a recovery thereon by the mortgagee. *Moore v. H. F. Ins. Co.*, 141 N. Y., 219.

Adding to mortgagee clause the words “guarantors of the mortgagee,” immediately after the name of beneficiary, is allowable under § 121 of the Insurance Law. Attorney-General Rep., 1903, page 331.

The insertion of the words “or any of its assigns” in the mortgagee clause of a standard fire insurance policy after the name of the mortgagee is a violation of the provisions of § 121 of the Insurance Law. Attorney-General Rep., 1902, page 272.

GASOLINE.—Certain permits for the use and storage of gasoline may be inserted in the standard policy but it should not be changed so as to place limitations on the company's liability. In *re Nat. Bd. of Fire Underwriters*, Attorney-General Rep., 1902, page 315.

PRESUMPTION.—The court will not presume that a policy of insurance which covers property in the state of Missouri is a New York standard policy. *Loomis v. Lewis*, 62 App. Div., 433.

A provision in the standard form of fire insurance that the insured shall not be liable for a greater proportion of any loss than the amount insured shall bear to the whole insurance covering the property, etc., does not permit the insurer to figure its proportion of liability upon other insurance held under a floating policy which provided that it did not cover merchandise on which "there was any specific insurance except on the excess of value above such specific insurance when it was exhausted." *Klotz Tailoring Co. v. Eastern Fire Ins. Co.*, 116 App. Div., 723.

SAFE DEPOSIT.—The provisions of section 121 of the Insurance Law prohibit not only the issuance of a policy insuring against loss by fire of coupon bonds and other negotiable securities, but also the issuance of a policy covering the liability of a safe deposit and storage company for loss thereof by fire. Attorney-General Rep., February 8, 1912.

INSPECTION.—The words "within sixty days after the fire" as used in the standard fire insurance policy means within sixty days after the fire has terminated or abated to such an extent that an inspection of the damaged property may be had; the omission of the venue from a proof of loss may be supplied by amendment. *Slocum v. Saratoga & Washington Fire Ins. Co.*, 149 App. Div., 867.

An addition to the authorized mortgagee clause which makes the interest of the mortgagee "subject to no plea in bar of its right to recover * * * except loss by means of invasion, etc.," is inconsistent with the provisions of the standard policy as its effect would be to make the policy incontestable for any cause even for willful concealment, etc. Attorney-General Rep., April 10, 1903.

§ 121-a. Appointment of umpire by court.

When, in the event of any loss or damage to property in this state described in any policy of fire insurance and covered thereby, the ascertainment of the amount of any such loss or damage is, as provided in the policy, to be determined by appraisers, one selected by the company, the other by the insured, and the two so chosen shall have failed or neglected, for a space of ten days after both have been chosen, to agree upon and select an umpire, it shall be lawful for either the insured or the company to apply to any court of record in the county in which the property is or was located, on five days' notice in writing, to the other party of his or its intention so to do, to appoint a competent and disinterested umpire. Any such notice in writing, when served by the insured, may be served upon any local agent of the company;

and the said court shall, on proof by affidavit of the failure or neglect of the said appraisers to agree upon and select an umpire within the time aforesaid, and of the service of notice aforesaid, forthwith appoint a competent and disinterested person to act as umpire in the ascertainment of the amount of said loss or damage; and the acts of the umpire so appointed shall be binding upon the insured and the company to the same extent as if such umpire had been selected in the manner provided for in said policy of insurance.

No policy of fire insurance shall be hereafter issued on property located in this state, unless the foregoing provisions of this section shall be printed on or attached thereto under the following title: "Provisions required by law to be stated in this policy."

Added by L. 1913, chap. 181. In effect June 30, 1913.

Note.—For purpose of addition of this section see note to § 121, ante.

§ 122. Payment of return premiums on cancellation of policy.

Any corporation, person, company or association transacting the business of fire insurance in this state shall cancel any policy of insurance upon the request of the insured or his legal representatives, and shall return to him or to such representative the amount of premium paid, less the customary short rate premium for the expired time of the full term of which the policy has been issued or renewed, notwithstanding anything in the policy to the contrary. Where the laws of any state permit corporations organized under its laws to cancel policies of insurance upon different terms than herein set forth, corporations organized under the laws of this state may cancel policies upon risks in any such state upon the same terms as are provided for corporations organized under its laws.

Source.—Former § 122; originally revised from L. 1880, chap. 110, § 3 as amended by L. 1886, chap. 612.

Where the charter and by-laws of a mutual insurance corporation exclude from membership persons who effect insurance with it upon a cash basis, a receiver may properly levy an assessment upon capital stock notes in order to pay back unearned premiums upon cash policies which have been duly canceled under the Insurance Law, as the holders of such policies sustain no relation to the corporation other than that of mere contractors with it. *Regener v. Phillips*, 26 Misc., 311.

An insurance company, when cancelling a policy before maturity, has no right to deduct anything from the unearned premium beyond what is admissible under the short-rate system; and a further deduction, through which it seeks to get back what it has paid brokers to place the risk, is

wholly unauthorized and may be recovered of the company by an assignee of the insured. *McKenna v. Fireman's Ins. Co.*, 30 Misc., 727.

The withdrawal of a policy before it becomes operative is not a cancellation within the meaning of the Insurance Law so as to require notice to the insured. *Walrath v. Hanover Fire Insurance Co.*, 139 App. Div., 407.

§ 123. Cancellation of policies by receiver and issue of certificates of indebtedness.

The receiver of any domestic fire insurance corporation, on the receipt by him of any policy of the corporation in force, and upon the written request of the policy holder, shall cancel such policy and issue in lieu thereof, a certificate of indebtedness as such receiver to the policy holder for the amount of the premium paid less the proportion of premium for the expired time of the full term for which the policy had been issued or renewed, and upon the receipt of such certificate by the policy holder, the policy shall become null and void, notwithstanding anything in the policy to the contrary. The receiver, in his report of the liabilities of the corporation to the insurance department, shall state the total amount of such outstanding certificates of indebtedness not canceled at the date of the report.

Source.—Former § 123; originally revised from L. 1880, chap. 110, § 4.

§ 124. Extension of joint-stock corporations.

Any existing domestic joint-stock fire insurance corporation and any corporation organized under this article, having a capital of at least two hundred thousand dollars may, without increasing its capital, at any time within two years previous to the termination of its charter, after giving notice at least once a week for six weeks successively in a newspaper published in the county where such corporation is located of such intention, and with a declaration under its corporate seal, signed by the president and two-thirds of its directors, of their desire for such extension, extend the term of its original charter for a period of thirty years, by altering and amending the same so as to accord with the provisions of this article, and filing a copy of such amended charter with such declaration in the office of the superintendent of insurance; whereupon the same proceedings shall be had as are required upon the incorporation of a corporation under this article.

Source.—Former § 124; originally revised from L. 1853, chap. 466, § 18, as amended by L. 1862, chap. 367.

See § 37, General Corporation Law, chap. 28 of 1909. Extension of corporate existence.

A fire insurance company may extend its corporate existence when under section 124 or under section 32, General Corporation Law. Attorney-General's Opinion, February 1, 1909.

§ 125. Mutual may become stock corporations.

Any domestic mutual fire insurance corporation having surplus assets aside from premium and capital stock notes sufficient to re-insure all its outstanding risks, may, providing the superintendent of insurance give his consent thereto, and the president and directors thereof, by three-fourths vote decide to so do, so amend the charter thereof as to convert the same into a stock corporation. Such amended charter shall specify the name by which the corporation has been known, and also the name by which it desires to be known in the future, the location of its principal office; the amount of its capital stock, and the number of shares into which the same shall be divided, and the par value of each; but the amount of its capital stock shall not be less than two hundred thousand dollars. Directors and officers of such corporation shall hold their said positions respectively until the expiration of the terms for which they were elected. Their successors shall be elected as if said corporation had been originally incorporated as a stock corporation in accordance with the provisions of this chapter. When any change shall have been decided upon by three-fourths of the directors, and the consent of the superintendent shall have been given thereto, then the directors shall open books of subscription to the capital stock, and give notice of the change and that said books have been opened, and that the members of such corporation on the day when such changed charter or articles were made and filed, and the consent of the superintendent thereto granted, shall be entitled to priority in subscribing to the capital stock of such corporation as hereinafter specified, by publication once a week for six successive weeks in a newspaper published in the county where said corporation shall have its principal office and also in the state paper at Albany. If three-fourths of the directors of such corporation shall not give their consent thereto, such corporation, after having given notice once a week for six weeks, of its intention to do so, and of the meeting hereinafter provided for, in the state paper and in a newspaper published in the county where such corporation is located, may, with the consent

of two-thirds of the members present at any regular annual meeting, or at any special meeting duly called for the purpose, or with the consent in writing of two-thirds of the members of such corporation, unless otherwise provided in its charter, become a joint stock corporation by conforming its charter to and otherwise proceeding in accordance with this chapter. Every member of such corporation on the day of such annual or special meeting, or the date of such written consent, or the date of the filing of the amended articles of incorporation and of the consent of the superintendent thereto, shall be entitled to priority in subscribing to the capital stock of such corporation for one month after the opening of the books of subscription, in proportion to the amount of cash premiums paid in by such member on unexpired risks in force on the day of such annual or special meeting, or the date of such written consent, or the date of the filing of such amended charter or articles and of the consent of the superintendent thereto, at the expiration of such month, then the board of directors shall sell and dispose of the capital stock which shall not have been taken by the members aforesaid, to such persons as may subscribe to the same; and when the capital stock shall have been fully subscribed to and paid in, the directors shall notify the superintendent of that fact, and thereupon the superintendent shall make or cause to be made an examination of the affairs of the said company, and if he shall find that the proceedings for the change thereof from a domestic mutual fire insurance corporation to an insurance stock corporation, have been regularly taken in conformity with this section, and that the capital stock shall have been fully subscribed for, and the amount thereof paid in, in cash, or in such securities as stock insurance corporations are entitled to hold under the provisions of this chapter for capital investments, then the superintendent shall certify that such examination has been made, and that the proceedings have been regularly taken, the capital stock paid in and the said corporation recognized as an insurance stock corporation, and thereupon said corporation shall come under the provisions of this chapter in the same manner as if it had been incorporated thereunder.

Source.—Former § 125, as amended by L. 1896, chap. 850; originally revised from L. 1853, chap. 466, § 18, as amended by L. 1862, chap. 367.

INTEREST.—Right of the joint stock corporation, out of the assets of the mutual company, to pay receipts bearing ten per cent interest issued by it. *Manhattan Fire Ins. Co. v. Fox*, 74 App. Div., 271.

CONSENT.—Since the amendment of this section by chap. 850 of the Laws of 1896, it is no longer necessary to obtain the consent of two-thirds of the members to change a mutual company to a stock corporation; the change made by this amendment does not violate the constitutional rights of the members or policyholders in such a company. *Grobe v. Erie Co. Mut. Ins. Co.*, 39 App. Div., 183.

RIGHT TO SUBSCRIBE.—Where a mutual fire insurance company proposes to convert itself into a stock corporation, the right to subscribe is dependent upon the amount of cash paid in premiums on policies outstanding. The term "unexpired risks in force," applies to policies outstanding and not to property insured. Attorney-General's Rep., July 2, 1913.

Upon conversion of a mutual fire insurance corporation into a stock corporation, the right of a member to subscribe to the capital stock is determined by the amount of cash premiums paid in by him upon policies in force at that time. Attorney-General Rep., 1914, page 75.

§ 126. Extension of term of charter of mutual corporations.

Every domestic mutual fire insurance corporation, having a capital in premium notes of an amount required of such corporation incorporated under this article, may at any time within two years previous to the termination of its charter, after giving notice once a week for six weeks successively in a newspaper published in the county where such corporation is located of such intention, and with a declaration, under its corporate seal, signed by its president and two-thirds of its directors, of their desire for such extension, extend the term of its original charter for a period of thirty years, by altering and amending the same so as to accord with the provisions of this chapter, and filing a copy of such amended charter and declaration in the office of the superintendent of insurance; whereupon the same proceedings shall be had as are required upon the formation of a corporation under this article, except as to its capital, which shall be certified to be in accordance with the provisions of this section. Every corporation so extended shall come under the provisions of this chapter in the same manner as if it had been incorporated originally thereunder. Every fire insurance corporation which has heretofore changed from a mutual to a joint-stock corporation, pursuant to the provisions of law, shall be deemed and be held by such change to have continued and extended its charter for the period named therein, not exceeding thirty years from the time of such change.

Source.—Former § 126; originally revised from L. 1853, chap. 466, § 18, as amended by L. 1862, chap. 367; L. 1882, chap. 243.

See § 37, General Corporation Law, chap. 28 of 1909. Extension of corporate existence.

§ 127. Existing corporations may reincorporate.

Any domestic fire insurance corporation may change its name, increase the amount of its capital, or avail itself of any powers conferred by the provisions of this chapter upon filing with the superintendent of insurance proof of publication of a notice of its intention to do so once a week for six successive weeks in the state paper and in a newspaper published in the county where its office is located, and if a stock corporation, the written consent of three-fourths in amount of its stockholders; or, if a mutual corporation, the unanimous consent of its directors unless otherwise provided in its charter; and a declaration under its corporate seal, signed by its president and directors, of its desire to do so, and upon obtaining and filing with the superintendent his consent thereto. It shall thereupon file with the superintendent and in the office of the clerk of the county where its office is located a copy of its charter so altered or amended, and upon the same proceedings being thereafter had as are required by this chapter upon the formation and organization of an insurance corporation under this article, it shall be deemed and be held to be incorporated under the provisions of this article.

Source.—Former § 127; originally revised from L. 1853, chap. 466, § 19, as amended by L. 1875, chap. 208.

See § 37, ante. Corporations heretofore formed brought within the provisions of the Insurance Law.

See § 106, Statutory Construction Law, chap. 27 of 1909, as to effect of repeal and re-enactment of prior statutes.

See § 60 et seq., General Corporation Law. Proceedings to change the name of a corporation.

Section 43 of the Stock Corporation Law regulates the time within which capital stock shall be paid in, but the certificate filed according to said law is evidence of authority to increase or reduce such capital stock. Attorney-General Rep., Jan. 21, 1896.

Where there are provisions affecting proceedings to increase capital stock in both the Stock Corporation Law and the Insurance Law, the latter must be considered as additional where not in conflict; the consent of the superintendent to the proposed increase could not be properly given in advance to filing with him proof of other steps required by the statute; proof of consent of stockholders to the increase must be shown by affidavit of the secretary. Attorney-General Rep., June 13, 1903.

§ 128. Duration of charter.

Every fire insurance corporation incorporated or extended under this chapter shall continue in existence for the term specified in its charter, not exceeding thirty years.

Source.—Former § 128; originally revised from L. 1853, chap. 466, § 19, as amended by L. 1875, chap. 208.

See § 124, ante. Extension of charter of joint stock corporation.

See § 126, ante. Extension of term of charter of mutual corporation.

See § 37, General Corporation Law, chap. 28 of 1909. Extension of corporate existence.

CHARTER EXPIRED.—The fact that the charter of an insurance company expires, by its own limitation, within the period during which a policy by its terms is to continue, will not avoid the policy and discharge the insured from his liability upon his premium note; the policy is valid for the unexpired term of the charter. *Huntley v. Beecher*, 30 Barb., 580; *Huntley v. Merrill*, 32 Barb., 626.

§ 129. Merger or consolidation of fire insurance corporations.

Any two fire insurance corporations organized under any law of this state may merge or consolidate such corporations into one corporation under the name of one or more of the corporations. The corporations may enter into and make an agreement for such merger or consolidation under their respective corporate seals, prescribing its terms and conditions; the amount of its capital, which shall not be larger in amount than the aggregate amount of capital of the merged or consolidated corporations and the number of shares into which it is to be divided. Such agreement must be assented to by a vote of the majority of the number of directors of each corporation prescribed in its charter and must be approved by the votes of stockholders owning at least two-thirds of the stock of each corporation represented and voted upon in person or by proxy at a meeting, called separately for that purpose, upon a notice stating the time, place and object of the meeting served at least thirty days previously upon each personally or mailed to him at his last known post office address and also published at least once a week for four weeks successively in some newspaper printed in the state, town or county where such corporation has its principal office and there shall be endorsed upon the agreement the certificate of the secretaries of the respective corporations under the seals thereof to the effect that the same has been assented to by such votes of the di-

rectors and approved by such votes of the stockholders. The agreement shall contain a copy of the charter under which the business is to be conducted, which shall conform to the provisions of either one or more of the charters of the merging or consolidating corporations; and, the continuation of said charter shall be for the time therein stated, not exceeding the longest unexpired time of the charter of one of the merging or consolidating corporations. Every such agreement must have the approval of the superintendent of insurance. Upon filing such agreement, with such certificate of the secretaries and approval of the superintendent of insurance endorsed thereon in the office of the superintendent of insurance and a duplicate or certified copy thereof in the office of the clerk of the county where the office of the contracting corporation is located, the details of such agreement may be carried into effect as provided therein. The corporation may require the return of the original certificates of stock held by each stockholder in each of the corporations to be merged or consolidated, and issue in lieu thereof new certificates for such number of shares of its own stock as such stockholders may be entitled to receive. Upon such merger or consolidation all the rights, franchises and interests of the corporations so merging or consolidating in and to every species of property and things in action belonging to them, or either of them, shall be deemed to be transferred to and vested in the new corporation, without any other deed or transfer, and the new corporation shall hold and enjoy the same to the same extent as if the old corporations, or either of them, should have continued to retain their titles and transact business. The new corporation shall succeed to all the obligations and liabilities of the old corporations, or any of them, and shall be held liable to pay and discharge all such debts and liabilities in the same manner as if they had been incurred or contracted by it. The stockholders of the old corporation shall continue subject to all the liabilities, claims and demands existing against them, or either of them, at or before such merger or consolidation. No action or proceeding pending at the time of the consolidation in which any or all of the old corporations, may be a party, shall abate or discontinue by reason of the merger or consolidation, but the same may be prosecuted to final judgment in the same manner as if the merger or consolidation

had not taken place, or the new corporation may be substituted in place of any corporation so merged or consolidated by order of the court in which the action or proceeding may be pending. So far as they may be applicable, the provisions of this section shall apply to all corporations heretofore merged or consolidated.

Source.—Former § 129, as amended by L. 1899, chap. 165; originally revised from L. 1878, chap. 98.

See § 42, General Corporation Law, chap. 28 of 1909 Stockholder may waive notice.

See § 180, Tax Law, chap. 62 of 1909. Consolidating corporation to pay organization tax upon amount of capital in excess of the aggregate capital of the consolidating companies.

APPLICATION OF SECTION.—This section has no application to a change from a mutual to a stock corporation. *Manhattan Fire Ins. Co. v. Fox*, 74 App. Div., 271.

§ 130. Guaranty and special reserve funds.

Any domestic fire insurance corporation may create a guaranty surplus fund and a special reserve fund upon the adoption of a resolution by its board of directors at a regular meeting, and upon filing with the superintendent of insurance a copy thereof, declaring their desire and intention to create such funds and to do business under this and the two following sections. The superintendent shall thereupon make or cause to be made an examination of such corporation, and he shall make a certificate of the result thereof, which shall particularly set forth the amount of surplus funds held by it at the date of the examination, which, under the provisions of this section may be equally divided between and set apart to constitute guaranty surplus and special reserve funds, which certificate shall be recorded in the insurance department.

Thereafter all policies and renewals of policies issued by such corporation shall have printed thereon by it a notice that they are issued under and in pursuance of this and the two following sections of this chapter referring to the same by the numbers of sections, and all such policies and renewals shall be subject to the provisions of such sections. After the passage and filing of such resolution, the corporation shall not make, declare or pay in any form any dividend upon its capital stock exceeding seven per centum per annum thereon, and upon the surplus funds to be formed

thereunder, until after its guaranty surplus fund and its special reserve fund shall have together accumulated to an amount equal to its capital stock; and until such funds shall together amount to a sum equal to its capital stock, the entire surplus profits of the corporation above such annual dividend of seven per centum shall be equally divided between and be set apart to constitute such guaranty surplus and special reserve funds, which funds shall be held and used as hereinafter provided and not otherwise. Any such corporation which shall declare or pay any dividend contrary to the provisions herein contained, shall be deemed to have forfeited its charter.

In estimating the profits of any such corporation for the purpose of making a division thereof between the guaranty surplus fund and the special reserve fund, until such funds shall together amount to a sum equal to its capital stock, there shall be deducted from the gross assets of the corporation, including for this purpose the amount of the special reserve fund, the sum of the following items:

1. The amount of all outstanding claims.
2. An amount sufficient to meet the liability of the corporation for the unearned premiums upon its unexpired policies, which shall be at least equal to the unearned premiums on policies having one year or less to run, and a pro rata proportion of the premiums received on the policies having more than one year to run, and shall be known as the reinsurance liability.
3. The amount of its guaranty surplus fund and its special reserve fund.
4. The amount of its capital.
5. Interest at the rate of seven per centum per annum upon the amount of its capital and of such funds for whatever time shall have elapsed since the last preceding cash dividend.

The balance shall constitute the net surplus of the corporation subject to the equal division between the funds as herein provided. When the corporation shall notify the superintendent of insurance that it has fulfilled the requirements of this section, and that its guaranty surplus fund and its special reserve fund, taken together, equal its capital stock, he shall make an examination of the corpo-

ration and make a certificate of the result thereof; and thereafter such corporation may continue, out of any subsequent profits of its business, to add to such funds, either the whole or only a part thereof, but when any addition is made to the special reserve fund, an equal sum shall be carried to the guaranty surplus fund. Provided, however, that no such corporation shall establish such guaranty surplus fund and special reserve fund after June first, nineteen hundred and fifteen.

Source.—Former § 130; originally revised from L. 1874, chap. 189, §§ 1-3, § 6, as amended by L. 1878, chap. 282.

Amended by L. 1915, chap. 369. In effect May 1, 1915.

Note.—The amendment by L. 1915, chap. 369, in relation to guarantee surplus and special reserve fund, prohibited the establishing of such funds by foreign insurance corporations after June 1, 1915. It adds new section 132a, providing that companies which have heretofore established a guarantee surplus and special reserve fund may discontinue such funds and thereafter cease doing business under sections 130, 131 and 132.—Ed.

See § 118, *ante*. Allowances of assets and estimation of liabilities upon examination.

Guarantee surplus fund and special reserve funds are to be regarded as a liability only in the sense that surplus is a liability. Attorney-General Rep., 1904, page 413.

INVESTMENT.—The second sentence of § 16 applies to investment of the special reserve fund, as provided for by § 130, in excess of one-half of its capital stock. Attorney-General Rep., 1901, page 240.

REDUCTION OF FUND.—An insurance company retiring from business may reduce its "guaranty and special reserve fund" with the superintendent of insurance by withdrawals and exchanges to an amount sufficiently large to secure its outstanding liabilities. In re Standard Fire Insurance Company, Attorney-General Rep., 1893, page 392.

WITHDRAWAL OF FUNDS.—Funds cannot be withdrawn from the special reserve fund when the guaranty surplus fund is impaired. In re American Fire Ins. Co., Attorney-General Rep., 1896, page 25.

§ 131. Funds; how invested.

Such guaranty surplus fund shall be held and invested by such corporation in the same manner as its capital stock and surplus accumulations, and shall be liable and applicable in the same manner as the capital of the corporation to the payment generally of its losses. Such special reserve fund, until it shall amount to a sum equal to one-half of the capital stock, shall be invested in the same manner as the capital of the corporation, and any additional sum added to such fund shall be invested in any securities in which the corporation is by law authorized to invest its capital or its surplus accumulations, and shall be deposited from time to

time, as the same shall accumulate and be invested, with the superintendent of insurance.

Such special reserve fund shall be deemed a fund contributed by the stockholders to protect such corporation and its policy holders other than claimants for losses already existing or then occurred, in case of any extraordinary conflagration or conflagrations as hereinafter mentioned, and shall not be regarded as any part or portion of the assets of the corporation so as to be liable for any claim for loss by fire or otherwise, except as herein provided.

Source.—Former § 131; originally revised from L. 1874, chap. 189, § 4, § 5, as amended by L. 1878, chap. 282.

See § 16, *ante*. Investment of capital and surplus.

FUNDS.—The guaranty surplus fund and the special reserve fund constitute liabilities of the corporation and must be so regarded in any statement purporting to show the true financial condition of the company; the special reserve fund cannot be said to be depleted as it remains intact in the vaults of the insurance department; policyholders holding policies under §§ 130, 131 and 132 have the special reserve fund as a special trust for their protection until it is used as capital stock because the latter is depleted; the extinguishment of the guaranty surplus fund does not limit the right of the company to do business. Attorney-General Rep., 1904, page 262.

INVESTMENT.—Until the special reserve fund amounts to one-half the capital stock it should be invested as provided by § 13; when in excess of such amount it is to be invested as provided by § 16. Attorney-General Rep., 1901, page 240.

EXCHANGE OF SECURITIES.—The deposit for a special reserve fund is intended to protect policyholders from future losses in the event of extraordinary conflagrations; in the exchange of securities of such fund they should only be accepted at their par value, or of equal par and market value with those exchanged for. In re Continental Ins. Co., Attorney-General Rep., 1896, page 279.

§ 132. Proceedings in case of extensive conflagrations.

When any extensive conflagration or conflagrations shall occur whereby the claims upon the corporation shall exceed the amount of its capital stock and of the guaranty surplus fund hereinbefore provided, the corporation shall notify the superintendent of insurance of the fact, who shall then make or cause to be made, an examination of the corporation, and shall issue his certificate in duplicate of the result, showing the amounts of capital, of guaranty surplus fund, of special reserve fund, of reinsurance liability, and all other assets.

One of such certificates shall be given the corporation, and the other shall be recorded in the insurance department. Such special

reserve fund shall be immediately held to protect all policy holders of the corporation other than such as are claimants upon it at the time, or such as become claimants in consequence of such conflagration or conflagrations.

The amount of such special reserve fund, and an amount equal to the unearned premiums of such corporation, to be ascertained as hereinbefore provided, shall constitute the capital and assets of such corporation for the protection of policy holders other than such claimants, and for the further conduct of its business. Such certificate of the superintendent shall be binding and conclusive upon all parties interested in the corporation, whether stockholders, creditors or policy holders. Upon the payment to the claimants for losses or otherwise, existing at the time of or caused by such general conflagration or conflagrations, of an amount to which they are respectively entitled in proportion to their several claims, of the full sum of the capital of the corporation and of its guaranty surplus fund, and of its assets, except only such special reserve fund and an amount of its assets equal to the liability of the corporation for unearned premiums, as so certified by the superintendent, such corporation shall be forever discharged from any and all further liability to such claimants and to each of them.

The superintendent shall, after issuing such certificate, upon the demand of the corporation, transfer to it all such securities as shall have been deposited with him by it as such special reserve fund. If the amount of such special reserve fund shall be less than fifty per centum of the full amount of the capital of the corporation, a requisition shall be issued by the superintendent upon the stockholders to make up the capital to that proportion of its full amount, in the manner now provided by law in the case of a corporation with impaired capital. Any capital so impaired shall be so made up to at least the sum of two hundred thousand dollars. If the corporation, after such requisition, shall fail to make up its capital to at least such amount as herein directed such special reserve fund shall be held as security and liable for all losses occurring upon policies of such corporation after such conflagration or conflagrations. If any amount greater than a sum equal to one-half of its capital stock shall by such corporation, under the provisions of the two preceding sections, have been deposited with such superin-

tendent, he shall retain of such securities a sum equal to one-half of the amount he shall so hold thereof in excess of such one-half of the capital stock, and transfer the balance thereof to the corporation as herein provided. The amount so transferred to the corporation shall, from the time of such transfer, if not less than two hundred thousand dollars, constitute the capital stock of the corporation for the further conduct of its business as hereinbefore provided. The sum so retained by the superintendent shall thenceforth constitute the special reserve fund of the corporation, to which additions may be made as herein provided, and shall be held in the same manner, for the same purposes and under the same conditions as the original special reserve fund of the corporation was held. The corporation shall in its annual statement to the insurance department set forth the amount of such special reserve fund and of its guaranty surplus fund. If in consequence of the payment of losses by fires, or of the expenses of the business, or of the interest payable under the provisions of this chapter to stockholders, or from any cause, the guaranty surplus fund shall be reduced in amount below the amount of the special reserve fund, the directors of the corporation shall have the right, at their option, at the time of making any division of the net profits as herein provided, to carry a larger sum to the guaranty surplus fund than to the special reserve fund; but this privilege shall cease when the two funds are made equal in amount.

The policy registers, insurance maps, books of record and other books in actual use by the corporation in its business, are not to be considered as assets, but shall be held by it for its use in the protection of its policyholders not claimants for losses at the time of such general conflagration. If after the accumulation of such special reserve fund, it shall appear upon examination by the superintendent that the capital of the corporation has, in the absence of any such extensive conflagration, become impaired, he shall order a call upon the stockholders to make up such impairment, and the board of directors may either comply with such order and require the necessary payments of the stockholders, or, at their option, they may apply for that purpose so much of such special reserve fund as will make such impairment good. No corporation doing business under this and the two preceding sections

shall insure any larger amount upon any single risk than is permitted by law to a corporation possessing the same amount of capital irrespective of the funds hereinbefore provided for.

Source.—Former § 132; originally revised from L. 1874, chap. 189, §§ 7, 8, as amended by L. 1878, chap. 282.

WITHDRAWAL OF FUNDS.—Funds cannot be withdrawn from the special reserve fund when the guaranty surplus fund is impaired. In re American Fire Ins. Co., Attorney-General Rep., 1896, page 25.

Special reserve fund should not be withdrawn where the surplus fund is impaired. In re Amer. Fire Ins. Co., Attorney-General Rep., 1896, page 237.

The statute does not contemplate the maintenance of the so-called guaranty surplus fund at a parity with the special reserve fund, but the provisions of section 132 indicate that the legislature expressly contemplated that the guaranty surplus fund might fall below the special reserve fund. Attorney-General's opinion, December 3, 1908.

§ 132-a. Discontinuance of special reserve and guaranty surplus funds.

Any domestic fire insurance corporation which has heretofore established a guaranty surplus fund and special reserve fund may, at a regular meeting of its board of directors, adopt a resolution declaring its desire and intention to discontinue such funds and to cease to do business under and in pursuance of sections one hundred and thirty, one hundred and thirty-one and one hundred and thirty-two of this chapter, and file a certified copy of such resolution with the superintendent of insurance.

Upon the adoption and filing of such resolution, all rights of such corporation to withhold such special reserve fund from its general creditors shall be terminated and the corporation shall discontinue printing upon its policies or renewals the notice provided for in section one hundred and thirty of this chapter, and thereafter the provisions of said sections one hundred and thirty, one hundred and thirty-one and one hundred and thirty-two shall cease to apply to such corporation; provided that the special reserve fund of such corporation shall continue at the amount prescribed by said sections at the date of the making and filing of such resolution and the guaranty surplus fund shall continue at a like amount, but such funds need not be increased on account of any increase in capital of any such corporation after the adoption and filing of such resolution and shall be held and invested as provided in said sections, but only for the purpose of

assuring to the holders of policies at the time such resolution is filed with the superintendent of insurance such rights and privileges as may inure to them under said sections.

At the expiration of five years after the adoption and filing of such resolution by any such corporation, the special reserve fund shall be reduced to an amount equal to the unearned premium upon and all losses incurred and unpaid under any remaining policies which were outstanding at the time of the adoption and filing of such resolution; and the excess of the special fund above such amount shall be returned by the superintendent of insurance to such corporation; and when all policies which were outstanding at the time of the adoption and filing of such resolution shall have terminated by expiration or by cancellation, the entire balance of such special reserve fund shall be returned to such corporation.

Added by L. 1915, chap. 369. In effect May 1, 1915.

See note after § 130.

§ 133. Payment of tax by agents of foreign fire insurance corporations to fire departments.

Except in the cities of New York and Buffalo there shall be paid to the treasurer of the fire department of every city or village of this state, whether incorporated or unincorporated, having a fire department, company or organization, for the use and benefit of such department, or to the treasurer of such fire department within the fire limits, as established by law, of an unincorporated village, and when no treasurer of a fire department exists, then to the treasurer or other fiscal officer of such city or village, or in case of an unincorporated village to the supervisor of the town in which such village is situated who, for the purpose of this chapter, shall have the same powers as the treasurers of fire departments, on the first day of February of each year, by every person who shall act as agent for or on behalf of any foreign fire insurance corporation, association or individuals which insure property against loss or injury by fire, the sum of two dollars upon the hundred dollars, and at that rate, upon the amount of all premiums which during the year or part of a year ending on the last preceding thirty-first day of December shall have been received by such agent or person, or received by any other person for him, for any insurance effected or procured by him as such agent or broker against loss or injury

by fire upon property situate within the corporate limits of such city or village, or within the fire limits of such unincorporated village. Every city, except the city of New York, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, and every officer, board of officers and associations receiving any portion of the tax directed to be paid by this section or any similar provision of law shall within ten days after the receipt of the same, pay to the treasurer of the firemen's association of the state of New York, ten per centum of the amount so received by it or him, for the support or maintenance of the Volunteer Firemen's Home at Hudson, New York. On or before the first day of April in each year every such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association, shall, by its chief fiscal officer, treasurer, or other officer whose duty it may be to receive such funds, deliver to the treasurer of the Firemen's association of the state of New York a statement showing the name of each person or corporation from whom any such tax shall have been received and the amount paid by each, which statement shall be verified by the officer making the same to the effect that the same is correct and true and that such statement correctly shows the amount of such tax received by such city, village, fire department, fire, hose, or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association since the first day of April in the preceding year. Any such city, village, fire department, fire, hose or hook and ladder company, fire district, or fire district association, firemen's benevolent associations, exempt or veteran firemen's associations, officer, board of officers and association receiving any portion of such tax and failing to make and deliver such verified statement as herein provided or omitting to pay ten per centum thereof to the treasurer of the Firemen's association of the state of New York as provided herein within the time above allowed shall forfeit the sum of fifty dollars in addition to the amount of such tax to be recovered in an

action which may be maintained by said Firemen's association of the state of New York in any of the courts of this state.

Source.—Former § 133, as amended by L. 1901, chap. 726; originally revised from R. S., pt. 1, chap. 20, tit. 21, § 3, as amended by L. 1837, chap. 30; L. 1849, chap. 178, § 1; L. 1875, chap. 465, § 1, as amended by L. 1890, chap. 406; L. 1886, chap. 604, § 5, as amended by L. 1887, chap. 520.

FIRST CLAIM.—Section 133, in regard to the percentage tax collected from foreign fire insurance companies in cities, seems to provide that the first claim upon such monies is for the relief of exempt or veteran volunteer firemen, administered through organized firemen's relief or benevolent societies having requisite authority. *Exempt Firemen's Assn. v. City of Little Falls*, 148 App. Div., 440.

CONDITIONS.—A state may prohibit a foreign corporation from transacting business in this state, or may impose conditions, on compliance of which it may come. *People v. Fire Assn. of Philadelphia*, 92 N. Y., 311.

§ 523 of the New York Consolidation Act, requiring every person who shall act in the county and city of New York as agent for any association of individuals, not incorporated by the laws of this state, in effecting insurance against loss or injury by fire in that county and city, to pay annually to the city fire department two per cent of the amount of premiums received by him, extends to the agent of domestic or resident non-incorporated associations of individual underwriters. *Fire Department v. Stanton*, 159 N. Y., 229.

APPORTIONMENT.—Moneys paid by agents of foreign fire insurance companies, pursuant to requirements of § 133, should be apportioned among the several companies which have been recognized by the common council of the city of Oneida as members of the fire department of said city. Volunteer companies have no preference under the statute over paid companies. *Cary v. City of Oneida*, 158 App. Div., 773.

§ 134. Undertaking of agent.

No person shall, as agent for any such foreign insurance corporation, association or individuals, effect any insurance upon any property situate in any city or village of this state upon which the sums specified in the preceding section are required to be paid, or as such agent procure such insurance to be effected, until he shall have executed and delivered to the officer to whom such account is to be rendered and such payments to be made, a bond to such fire department in the penal sum of five hundred dollars, with such sureties as such treasurer, supervisor or other fiscal officer shall approve, with a condition that he will annually render to such treasurer, supervisor or other fiscal officer, on the first day of February in each year a just and true account, verified by his oath that the same is true, of all premiums which, during the year ending on the thirty-first day of December preceding such report, shall have been received by him or any other person for him, for any insurance against loss or injury by fire upon property situ-

ated in such city or village, which shall have been effected or procured by him to have been effected by any such corporation, association or individuals, and that he will annually, on the first day of February in each year, pay to such treasurer or supervisor or other fiscal officer two dollars upon every hundred dollars, and at that rate upon the amount of such premiums. If any such agent shall desire to transact business in more than one city, town or village, he may, instead of executing and delivering a separate bond for each such city, town or village, as required by this section, execute and file with the superintendent of insurance a bond in the penal sum of fifteen hundred dollars, with such sureties as the superintendent shall approve, conditioned that he will make his account and pay the sums so required to be paid in each city, town or village in which he shall effect insurance. Any such corporation, association or individual, having authority to transact business in this state, on filing a bond in the penal sum of two thousand five hundred dollars with the superintendent of insurance that it will make its account and pay the sums so required to be paid, may effect such insurance in any city, town or village wherein it has no agent.

Source.—Former § 134; originally revised from R. S., pt. 1, chap. 20, tit. 21, § 4; L. 1849, chap. 178, §§ 2-3; L. 1875, chap. 465, § 2, as amended by L. 1890, chap. 406.

Amended by L. 1913, chap. 304.

Note.—The purpose of the amendment of this section by chapter 305 of 1913 was to relieve agents of foreign fire insurance companies, who wish to do business in several different towns or cities, from executing and delivering a separate bond for each such city or town by executing and filing with the superintendent a bond in the penal sum of one thousand five hundred dollars with such sureties as the superintendent shall approve, conditioned that he shall make his account and pay the sums so required to be paid in each city, town or village in which he shall effect insurance.—Ed.

The provisions of this section are not limited in their application to local resident agents but apply to all agents of insurance companies writing contracts of insurance within the State. *Fire Dept. of East Rochester v. Barley*, 73 Misc., 628.

The requirement of filing a bond to secure the payment of taxes on insurance premiums may be complied with by the filing of one such bond for each agent notwithstanding the fact of his representing several foreign companies. *Attorney-General Rep.*, 1914, page 78.

SEPARATE BOND.—It is not necessary that a separate bond should be filed for each company represented by an agent, for the single bond will furnish adequate security for the payment of the tax in section 133. *Attorney-General's Rep.*, October 30, 1913.

§ 135. Penalty for refusal to pay.

Every such person who shall effect any such insurance without having executed and delivered such bond, shall for each offense, forfeit two hundred dollars, for the use and benefit of the fire department of such city or village, to be collected by and in the name of the fire department, treasurer or chief fiscal officer of the city or village in which the property insured is situated. The treasurer or chief fiscal officer of any city or village having no incorporated firemen's relief or benevolent society receiving any money under the laws of this state, shall, on or before the fifteenth day of February in each year, apportion and pay over all such moneys so received to the treasurers of such of the several fire companies as are duly recognized by the common council, trustees or supervisors of such city or village.

If he shall neglect or refuse to perform any or all of the duties required by this section, he shall forfeit the sum of two hundred dollars for every such neglect or refusal for the use and benefit of the fire department of such city or village, and the foreman of any fire company may sue for and maintain an action in the name of and for the benefit of such company for its proportion of the penalties prescribed by this section.

Source.—Former § 135; originally revised from L. 1875, chap. 465, § 3, as amended by L. 1886, chap. 604.

ACTION FOR PENALTY.—A person seeking to maintain an action for a statutory penalty must state every fact required to enable the court to judge whether he has a cause of action under the statute; a penalty under § 135 of the Insurance Law does not relate to an act done outside of the state of New York. *Ithaca Fire Dept. v. Rice*, 108 App. Div., 100.

§ 136. Penalty for refusal to exhibit foreign fire policies.

Every person whose property shall be insured in violation of section 135 of this chapter, and every person having the care or charge of property so insured, or of policies of insurance placed in violation of such section, as agent or trustee for another, who shall refuse or neglect to exhibit to the officer, entitled by section 134 of this chapter to receive the per centum of premium in such section provided, all policies so placed upon such property, or shall neglect or refuse to give such officer full information as to when, by whom, and in what corporation or corporations such property shall be so insured, and the name of the agent, broker or other person con-

nected with the effecting of such insurance, upon demand being duly made by such officer shall become liable to an action by and in the name of the fire department, organization or company of which such officer shall be the treasurer, for the sum of one hundred dollars for each such neglect or refusal.

All persons acting as brokers between any such agent or any such corporation and the assured, shall, within ten days after effecting any insurance specified in section 135, notify the officer entitled to receive the tax upon the premium upon such insurance of the fact of such insurance, together with the precise location of the property, the name of the insurer and the amount of the premium to be paid by the assured. Any broker willfully neglecting or refusing to comply with the provisions of this section, shall be liable to a like action and like penalty brought in the like manner hereinbefore provided. Actions brought under this section must be tried in the county in which the property alleged to be so insured is situated.

All moneys received pursuant to this section shall be apportioned and paid over in the same manner as provided in the preceding section of this chapter for the apportionment and payment of moneys received pursuant to such section and under a like penalty.

Source.—Former § 136; originally revised from L. 1886, chap. 60, § 4.

§ 137. License to agents in excepted cases.

The superintendent of insurance, in consideration of the yearly payment of two hundred dollars, except in counties having less than one hundred thousand inhabitants, in which case the fee shall not exceed twenty-five dollars, may issue to citizens, firms or corporations having places of business in this state, not exceeding two hundred in number, a license revocable at any time, permitting the party named in such license to act as agent to procure policies of fire insurance from corporations, persons, partnerships and associations which are not otherwise authorized to do business in this state. When any policies of fire insurance shall be procured under or by virtue of said license, there shall be executed by the licensed agent and by the party desiring an insurance, an affidavit in duplicate, one of which shall

be filed in the insurance department and the other in the clerk's office of the county in which the property proposed to be insured is located, within thirty days after the procuring of such insurance. Such affidavits shall set forth that the party desiring insurance is, after diligent effort, unable to procure the amount required to protect the property owned or controlled by him from the insurance corporations duly authorized to transact business in this state. The agent procuring policies in such unauthorized corporations or with persons, partnerships and associations, shall keep a separate account thereof, open at all times to the inspection of the superintendent, showing, first, the exact amount of such insurance placed for any party; second, the gross premiums charged thereon; third, in what corporation, or with what persons, partnerships or associations; fourth, the date of the policy; fifth, the term thereof, and sixth, the cities and villages within this state in which the insured property is located. Each party receiving such license shall, before transacting business thereunder, execute and deliver to the superintendent a bond to the people of the state, in the penal sum of two thousand dollars, with such sureties as the superintendent shall approve, conditioned that the said agent will faithfully comply with all the requirements of this chapter, and will pay to the treasurer of the Firemen's Association of the state of New York, to be expended for the use and support of the Firemen's Home, located at Hudson, Columbia county, New York, for the uses and purposes of said association, or, where such policies cover risks in cities of over one million inhabitants, having a fire patrol or salvage corps, to the treasurer of such fire patrol or salvage corps, in January and July of each year, a sum equal to three per cent. upon the amount of the gross premiums charged to policy holders less the amount of the gross premiums returned to the insured upon all policies procured by him during the preceding six months, pursuant to this article; and in default of payment to the treasurer of any fire patrol or salvage corps of any sum to which it may be entitled pursuant to the provisions of this section, or the treasurer of the said Firemen's Association of the sum due them, the treasurer of said fire patrol, salvage corps or association may sue for the same in any court of record in this state. All fire insurance policies issued to residents

of this state on property located herein by companies that have not complied with the requirements of the general insurance laws of the state shall be void, except as shall have been procured as herein set forth.

Source.—Former § 137, as amended by L. 1894, chap. 611; originally revised from L. 1884, chap. 346, § 4, as amended by L. 1890, chap. 552.

Amended by L. 1911, chap. 322.

See § 9, ante. No foreign corporation to transact business in this state without certificate of authorization by superintendent.

See § 29, ante. Copy of charter and verified statement to be filed in office of superintendent of insurance.

See § 31, ante. Agent not to transact business until certificate is filed in county clerk's office.

See § 32, ante. Renewal of certificate.

See § 49, ante. Any person aiding in the transaction of business of foreign corporation is deemed an agent thereof.

See § 50, ante. Agent's certificate of authority.

See § 53, ante. Penalty for violation of Insurance Law.

See § 54, ante. Agents not to act for unauthorized corporations.

See § 91, ante. Certificate of authority of agents.

APPLICATION.—§ 137 relates entirely to fire insurance corporations, persons, partnerships and associations which are not authorized to do business in this state. Attorney-General Rep., 1896, page 190.

A foreign fire insurance company should not be permitted to execute a contract without the state of New York which contains a clause providing that the policy shall not apply until accepted by the insured by endorsement on the face of the policy. Attorney-General Rep., 1906, page 555.

Procuring insurance from foreign corporations not admitted to do business in this state is in violation of § 137. In re Johnson et al., Attorney-General Rep., 1899, page 197.

This section does not apply to a policy of insurance, not procured as set forth in this section, issued to a resident of the state of New York on property located in the state of New York by a Massachusetts mutual fire insurance company not authorized to do business in the state of New York, where it appears that the contract was made, and was to be performed, in the state of Massachusetts, and was valid under the laws of that state. Western Mass. Ins. Co. v. Hilton, 42 App. Div., 52.

FOREIGN LLOYDS.—Special agents, licensed by the superintendent of the insurance department, cannot, under such license, place policies of insurance in "Foreign Lloyds." Attorney-General Rep., 1894, page 104.

Residents of New York, who have received certificates under § 137 authorizing them to write surplus lines, may place such insurance in foreign or unauthorized Lloyds without becoming liable under § 300. Attorney-General Rep., August 26, 1910.

This section in relation to "surplus line" does not have the effect of authorizing foreign companies to transact business in this State, but allows brokers to procure such insurance from a foreign country; when an agreement of the

insured to procure other insurance is conditioned upon the fact that the insurer is not authorized to do business in this State, it cannot contend that it had a limited authority to do business in this State, by force of § 137, so as to make the contract one which was perfected here. *Friedland v. Commonwealth Fire Insurance Co.*, 143 App. Div., 570.

AGENTS OF INSURED.—Agents authorized under the provisions of the Insurance Law to effect insurance with unauthorized companies, are the agents of the insured, and cannot act as agents for the insuring companies. *Attorney-General Rep.*, 1893, page 388.

Agents authorized under this section to procure insurance are the agents of the insured and not of the insurers, and where the insurance was actually procured though afterwards cancelled, the agent should be required to pay the tax of three per cent. *Attorney-General Rep.*, Nov. 23, 1910

INSURANCE BROKERS.—Clients may properly suppose that an insurance broker employed by them will perform their duty, and will not, without inquiry, give them a policy issued by an insolvent or irresponsible company, or by one not authorized to do business in the state of New York, and whose policies have no substantial support behind them. *Shepard v. Davis*, 42 App. Div., 462.

WAIVER BY AGENT.—Power of agent to waive condition as to other insurance. *Lewis v. Guardian F. & L. Assur. Co.*, 181 N. Y., 392; *aff'd* 93 App. Div., 157.

FORFEITURE.—One obtaining a policy of insurance in a foreign company having no office in this state, with a clause forfeiting the policy unless the premium is paid in a certain time must go to the company or its duly commissioned agent and make the payment within the time specified, to prevent a forfeiture. *Redfield v. Patterson Fire Ins. Co.*, 6 Abb. N. C., 456.

AFFIDAVIT.—The affidavit required as a prerequisite to the effecting of insurance with a company not authorized to do business in the state, must be made by the owner or person having control of the property and not by his agent. *In re Peaseley*, *Attorney-General Rep.*, 1892, page 320.

DEPOSITS.—Deposits previously made by a foreign corporation under §§ 27 and 28 of the Insurance Law are only held for policies issued while the company has the right to do business in the state, and not for policies subsequently issued by licensed agents. *In re Helvetia Swiss Fire Ins. Co.*, *Attorney-General Rep.*, 1902, page 174.

Insurance cannot be written unless at the time of such writing the property is actually located within the limits of the state. *Attorney-General's Opinion*, February 24, 1909.

POLICY IS VALID.—The failure on the part of the insurance company to comply with the provisions of §§ 37 and 137 does not render a policy issued by it void. *Marshall v. Reading Ins. Co.*, 78 Hun, 83.

A policy of insurance signed and sealed in Massachusetts by a corporation organized and doing business in that state, and mailed to the insured in this state pursuant to an order by mail, is a Massachusetts contract and not void under § 137. *Hammond v. International Railway Co.*, 63 Misc., 437.

Corporations are not citizens within the meaning of this section. *Attorney-General Rep.*, 1905, page 457.

LLOYDS.—The penalty due from Lloyds Association to the fire department of the city of New York, under title VII, is not collectible by the State. Attorney-General Rep., March 29, 1895.

A Lloyds Association may not be formed of unadmitted fire insurance companies with a capital of not less than \$100,000, all now doing business in this State as surplus line companies under licensed agents, the charter of which is to be secured by purchase. Attorney-General Rep., Oct. 7, 1904.

§ 138. License to persons, partnerships, associations and corporations in excepted cases.

The superintendent of insurance in his discretion may issue to any person, partnership, association or corporation complying with the requirements of this section, a certificate permitting the holder thereof to issue policies of fire insurance within this state, upon applications made to it or them, under the conditions as set forth in section one hundred and thirty-seven by agents licensed thereunder but not otherwise.

Such certificates shall be granted only upon the filing with the superintendent of insurance of an application therefor signed and acknowledged by the persons, partnership or the proper attorneys or officers of the associations or corporations desiring same and such applications shall contain the name and address in each instance of the agent or agents through whom the applicant proposes to conduct the business herein permitted. Such certificate when granted shall specify that the insurer or insurers named therein may issue in this state policies of fire insurance through the agent or agents named in such certificates, upon the application of agents licensed under section one hundred and thirty-seven but not otherwise. The sum of twenty-five dollars shall be paid to the superintendent of insurance for each certificate so issued and such certificate shall remain in force for the period of one year from the date thereof unless sooner revoked by the said superintendent, provided, however, that whenever the holder of any such certificate desires to substitute the name of any new agent in place of the agent named in the certificate, the superintendent may if he approves of the change, issue a new certificate for the unexpired term of the original certificate in which shall appear the name of such agent so substituted. Any certificate granted under this section shall be revoked upon proof to the satisfaction of the said superintendent that the holder thereof

either directly or through any agent or attorney in fact has violated any provision of this chapter, or is in such condition that the further transaction of business by it or them would be hazardous to the people of the state.

Every policy issued in this state by any person, partnership, association or corporation to whom a certificate under this section shall be granted (a) shall be countersigned by the agent named in the certificate; and (b) shall contain the provisions of the standard policy provided for by section one hundred and twenty-one of this chapter, or an agreement that the policy so issued shall be subject to such provision and that any condition thereof inconsistent with or contrary to the provisions of the standard policy shall be null and void; and (c) shall contain a further provision that service or a summons or other legal process relative to any claim under such policy may be made on the agent issuing or countersigning the same and that such service shall be equivalent to the personal service within this state of such process on the persons, associations or corporations obligated thereupon; and (d) shall have printed in red ink upon the outside cover thereof, under the name of the corporation or association issuing the same, in plain type, the words: Surplus line insurance only; this company (person, partnership or association, as the case may be) is not under the supervision of the New York state insurance department; issued by agent, address

The books and records of every agent within this state for such corporations, persons, partnerships and association shall be open at all times to the inspection of the superintendent of insurance, and must show, first the exact amount of insurance written; second, the gross premiums charged thereon; third, the date of the policy; fourth, the term thereof; fifth, the location of the property; and, sixth, the names of those licensed agents upon whose applications the insurance was issued.

Nothing herein contained shall be held to prevent any agent licensed under the provisions of section one hundred and thirty-seven from acting as the agent of any corporation, person, partnership or association to whom a certificate has been granted under this section.

Source.—Former § 138, repealed by L. 1909, chap. 286; added by L. 1911, chap. 322.

§ 138-a Public adjusters; certificate of authority.

The term "public adjuster" in this section shall include every person, partnership, association or corporation advertising, soliciting business or holding himself or itself out to the public as an adjuster of loss or damage by fire, or receiving any compensation or reward for the giving of advice or assistance to the assured in the adjustment of claims for loss or damage by fire, and all persons who for compensation or reward, whether by way of salary or commission or otherwise, solicit business, investigate or adjust losses or advise the assured with reference to claims for loss or damage by fire, on behalf of any other person, partnership, association or corporation engaged in the business of adjusting loss or damage by fire.

No person, partnership, association or corporation shall act as a public adjuster, or receive for or because of services rendered in the adjustment of any claim or claims for loss or damage by fire under a policy or policies of insurance upon property within this state, any money or commission or other thing of value, without first procuring a certificate of authority to act as a public adjuster from the superintendent of insurance.

The superintendent of insurance shall issue adjusters' certificates of authority to persons, partnerships, associations or corporations, applying therefor, whom he deems to be trustworthy and competent to transact business as public adjusters in such manner as to safeguard the interests of the public.

A certificate of authority issued to a corporation, partnership or association shall authorize only the officers and directors of the corporation, or the members of the partnership or association, specified in the certificate. The fee to be paid to the superintendent of insurance by the applicant for such adjuster's certificate at the time the application is made, and annually for the renewal thereof, shall be twenty-five dollars. If the applicant be a corporation, partnership or association such fee shall be paid for each person specified in the certificate.

Every adjuster's certificate of authority shall expire on the thirty-first day of December of the calendar year in which the same shall have been issued, but if an application for the renewal of any such certificate shall have been filed with the superintendent of insurance before January first of any year the certificate of authority sought to be renewed shall continue in full force and effect until the issuance by the superintendent of insurance of the new

certificate applied for or until five days after the superintendent of insurance shall have refused to issue such new certificate and shall have served notice of such refusal on the applicant therefor. Service of such notice may be made either personally or by mail, and, if by mail, shall be deemed complete if such notice is deposited in the post-office postage prepaid, directed to the applicant at the place of business specified in the application.

Before any adjuster's certificate of authority shall be issued by the superintendent of insurance there must be filed in his office a written application therefor. Such application shall be in the form or forms and supplements thereof prescribed by the superintendent of insurance and must set forth (1) the name and address of the applicant, and if the applicant be a partnership or association, the name and address of each member thereof, and if the applicant be a corporation, the name and address of each of its officers and directors; (2) whether any certificate of authority as agent, broker or adjuster has been issued theretofore by the superintendent of insurance to the applicant, and, if the applicant be an individual, whether any such certificate has been issued theretofore to any partnership or association of which he was or is a member or to any corporation of which he was or is an officer or director, and, if the applicant be a partnership or association, whether any such certificate has been issued theretofore to any member thereof, and, if the applicant be a corporation, whether any such certificate has been issued theretofore to any officer or director of such corporation; (3) the business in which the applicant has been engaged for the year next preceding the date of the application, and, if employed by another, the name or names and address or addresses of such employer or employers; (4) such information as the superintendent of insurance may require of applicants to enable him to determine their trustworthiness and competency to transact the business of adjuster in such manner as to safeguard the interests of the public.

An application for an adjuster's certificate of authority must be signed and verified by the applicant and, if made by a partnership or association, by each member thereof and if made by a corporation by each officer and director thereof to be authorized thereby to act as an adjuster.

A corporation, association or partnership to which a certificate of authority shall have been issued by the superintendent of insurance under this section may at any time make an application to the superintendent of insurance for the issuance of a supplemental certificate of authority authorizing additional officers or directors of the corporation or members of the partnership or association to act as adjusters, and the superintendent of insurance may thereupon issue to such corporation, association or partnership a supplemental certificate accordingly upon the payment of an additional fee for each member or officer or director thereby authorized to act as an adjuster.

A certificate issued under this section shall be revoked by the superintendent, if, after due investigation, he determines that the holder of such certificate (1) has violated any provision of this chapter; or (2) has made a material misstatement in the application for such certificate; or (3) has been guilty of fraudulent practices; or (4) has demonstrated his incompetency or untrustworthiness to transact the business of a public adjuster.

If an application for a certificate of authority under this section be rejected or such a certificate be revoked by the superintendent of insurance notice thereof shall forthwith be served on the applicant or on the holder of such certificate either personally or by mail, and, if by mail, such service shall be complete if such notice be deposited in the post-office postage prepaid, directed to the applicant or the holder of such certificate, as the case may be, at the place of business specified in the application or certificate.

This section shall not apply to an agent or employee of an underwriter by whom a policy of insurance against loss or damage by fire shall have been written upon property within this state, in adjusting loss or damage under such policy nor to a broker acting as adjuster without compensation for a client for whom he is acting as broker, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under article nine of this chapter.

Any person, partnership, association or corporation violating any of the provisions of this section shall, in addition to any other penalty in this chapter provided, forfeit to the people of the state five hundred dollars.

Added by L. 1913, chap. 22.

Amended by L. 1913, chap. 522, and L. 1914, chap. 108. In effect April 3, 1914.

Note.—The purpose of the addition of this section by chapter 22 of 1913 was to require adjusters of loss or damage by fire to procure a certificate of authority from the superintendent.—Ed.

The purpose of the amendment of this section by chapter 108 of 1914 was to give the Superintendent of Insurance absolute discretion in the matter of licensing public adjusters of loss or damage by fire, and to take away the right to a writ of certiorari to review the action of the Superintendent of Insurance, provided for in the present law.

In an action to recover for services in adjusting a fire insurance claim for defendants, there can be no recovery for such part of the services as were rendered before plaintiff procured a certificate of authority to act as a "public adjuster," even though after plaintiff had procured his license defendants promised to pay for the services rendered. *Stake & Co., Inc., v. Roth*, 91 Misc., 45.

§ 139. Organizations for assisting underwriters in insurance business generally.

Every corporation, association, bureau or board which now exists or hereafter may be formed, and every person who maintains or hereafter may maintain a bureau or office, located within or without this state, for the purpose of inspecting risks, adjusting losses, testing appliances, formulating rules or establishing standards for the information or benefit of underwriters in the transaction within this state of the business of insurance and which corporation, association, bureau or person receives contributions from or is financially aided directly or indirectly, wholly or partially or in any manner by any person, association or corporation authorized to transact the business of insurance within this state, shall file on demand with the superintendent of insurance a copy of the articles of agreement, association or incorporation and the by-laws and all amendments thereto under which such person, association, corporation, board or bureau operates or proposes to operate, together with his or its business address as well as such other information concerning such organization and its operation as may be required by the superintendent. Every such person, corporation, association, bureau or board, whether before or after filing of the information specified in the last preceding paragraph, shall be subject to the visitation and examination of the superintendent of insurance, who shall cause to be made an examination thereof whenever he deems it expedient. For this purpose he may appoint as examiners one or more competent persons, and upon such examinations, he, his deputy or any examiner authorized by him shall have all the powers given to the superin-

tendent, his deputy or any examiner authorized by him by section thirty-nine of this chapter, including the power to examine under oath the officers or agents and all persons deemed to have material information regarding the business of or manner of operation by every such person, corporation, association, bureau or board. No person, association or corporation authorized to transact the business of insurance within this state shall be a member or subscriber to any corporation, association, bureau, board or person referred to in this section nor shall it contribute to or financially aid any such corporation, association, bureau, board or person who shall fail to comply with the provisions of this section. Upon notice furnished by the superintendent of insurance every person, association or corporation authorized to transact the business of insurance within this state, shall terminate immediately its subscription or membership and shall cease to make further contributions directly or indirectly or in any manner to such corporation, association, bureau, board or person.

This section shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter, but it shall apply to all other forms of insurance mentioned in any article of this chapter.

Source.—Former § 139, repealed by L. 1909, chap. 286.

Added by L. 1913, chap. 23.

Note.—The purpose of the addition of this section by chapter 23 of 1913 was to bring under the supervision of the insurance department all corporations, associations, bureaus, etc., which are conducted for the purpose of inspecting risks, adjusting losses, testing appliances, formulating rules, or establishing standards for the information or benefit of underwriters.—Ed.

§ 140. Organizations for assisting in establishing insurance rates.

Every corporation, association, bureau or board which now exists or hereafter may be formed, and every person who maintains or hereafter may maintain a bureau or office, for the purpose of assisting any underwriting corporation, association, bureau or person in formulating, fixing, promulgating, applying or maintaining a rate on property or risks of any kind located in this state, shall

file with the superintendent of insurance a copy of the articles of agreement, association or incorporation and the by-laws and all amendments thereto under which such person, association, bureau or board operates or proposes to operate, together with his or its business address, as well as such other information concerning such organization and its operations as may be required by the superintendent. Every such person, corporation, association, bureau or board, whether before or after filing of the information specified in the last preceding paragraph, shall be subject to the visitation, supervision and examination of the superintendent of insurance, who shall cause to be made an examination thereof as often as he deems it expedient. For this purpose he may appoint as examiners one or more competent persons, and upon such examination, he, his deputy or any examiner authorized by him shall have all the powers given to the superintendent, his deputy or any examiner authorized by him by section thirty-nine of this chapter, including the power to examine under oath the officers or agents and all persons deemed to have material information regarding the business of or manner of operation of every such person, corporation, association, bureau or board.

This section shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter, but it shall apply to all other forms of insurance mentioned in any article of this chapter.

Source.—Former § 140, repealed by L. 1909, chap. 286.

Added by L. 1913, chap. 21.

Note.—The purpose of the addition of this section by chapter 21 of 1913 was to bring under supervision of department all bodies which are maintained for the purpose of assisting underwriting organizations in fixing, formulating, promulgating, applying or maintaining rates.—Ed.

§ 141. Rate-making associations.

Every corporation, association or bureau which now exists or hereafter may be formed, and every person who maintains or hereafter may maintain a bureau or office, for the purpose of suggesting, approving or making rates to be used by more than one underwriter for insurances, including surety bonds, on property or risks of any kind located in this state, shall file with the

superintendent of insurance a copy of the articles of agreement, association or incorporation and the by-laws and all amendments thereto under which such person, association or bureau operates or proposes to operate, together with his or its business address and a list of the members or insurance corporations represented or to be represented by him or it, as well as such other information concerning such rating organization and its operations as may be required by the superintendent.

Every such person, corporation, association or bureau, whether before or after the filing of the information specified in the last preceding paragraph, shall be subject to the visitation, supervision and examination of the superintendent of insurance, who shall cause to be made an examination thereof as often as he deems it expedient and at least once in three years. For such purpose he may appoint as examiners one or more competent persons, and upon such examination, he, his deputy or any examiner authorized by him shall have all the powers given to the superintendent, his deputy or any examiner authorized by him by section thirty-nine of this chapter, including the power to examine under oath the officers or agents and all persons deemed to have material information regarding the business of or manner of operation by every such person, corporation, association, bureau or board. The superintendent shall make public the results of such examination and shall report to the legislature in his annual report on the methods of such rating organization and the manner of its operation.

Each such person, corporation, association or bureau shall file with the superintendent of insurance whenever he may call therefor any and every schedule of rates or such other information concerning such rates as may be suggested, approved or made by any such rating organization for the purposes specified in the first paragraph of this section.

No such person, corporation, association or bureau shall fix or make any rate or schedule of rates which is to or may apply to any risk within this state, on the condition that the whole amount of insurance on such risk or any specified part thereof shall be placed at such rates, or with the members of or subscribers to such rating organization; nor shall any such person, corporation, association or bureau, or any person, association or corporation authorized to transact the business of insurance within this state, fix or make any rate or schedule of rates or charge a rate which discriminates unfairly between risks within this state of essen-

tially the same hazard or, if such rate be a fire insurance rate, which discriminates unfairly between risks in the application of like charges or credits or which discriminates unfairly between risks of essentially the same hazards and having substantially the same degree of protection against fire. Whenever it is made to appear to the satisfaction of the superintendent of insurance that such discrimination exists, he may, after a full hearing either before himself or before any salaried employee of the insurance department whose report he may adopt, order such discrimination removed; and all such persons, corporations, associations or bureaus affected thereby shall immediately comply therewith; nor shall such persons, corporations, associations or bureaus remove such discrimination by increasing the rates on any risk or class of risks affected by such order unless it is made to appear to the satisfaction of the superintendent of insurance that such increase is justifiable.

No such person, corporation, association or bureau or any other person, corporation, association or bureau, shall charge any licensing, registration, certification or membership fee to brokers who shall have been or hereafter may be licensed or authorized as such pursuant to the provisions of this chapter; nor shall any such rating organization or any other person, corporation, association or bureau or any two or more persons, associations or corporations authorized to transact the business of insurance within this state, acting in agreement, refuse to do business with or to pay commissions to any person who may be licensed or authorized as an insurance broker, pursuant to the provisions of this chapter, because such a broker will not agree to secure insurance only at the rates of premium fixed by such rating organization or the parties to such agreement.

Every such rating organization shall keep a careful record of its proceedings and shall furnish upon demand to any person upon whose property or risk a rate has been made, or to his authorized agent, full information as to such rate, and, if such property or risk be rated by a schedule, a copy of such schedule; it shall also provide such means as may be approved by the superintendent of insurance whereby any person or persons affected by such rate or rates may be heard, either in person or by agent, before the governing or rating committee or other proper executive of such rating organization on an application for a change in such rate or rates.

This section shall not apply to any contract of life insurance, nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property or risks located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter, but it shall apply to all other forms of insurance mentioned in any article of this chapter.

Source.—Former § 141, repealed by L. 1909, chap. 286.

Added by L. 1911, chap. 460, amended by L. 1912, chap. 175, and L. 1913, chap. 26.

Note.—The purpose of the amendment of this section by chapter 26 of 1913 was to enlarge the supervision of the superintendent in relation to examination of rate making associations, giving him powers he formerly had in connection with the examination of insurance companies, and to give better protection to the insured in regard to fixing and maintaining rates or schedules of rates.—Ed.

§ 142. Agent's certificate of authority.

The term "agent" in this section shall include an acknowledged agent or any person, partnership, association or corporation who shall in any manner aid in transacting the insurance business of any underwriter, incorporated or unincorporated, by negotiating for or placing risks or delivering policies or collecting premiums, but shall not include the officers and salaried employees of any such underwriter, who do not receive commissions. Every underwriter, incorporated or unincorporated, engaged in the transaction of any business of insurance within this state, upon the employment or termination of the employment of any person, partnership, association or corporation to act as its agent within this state, shall certify such fact together with the name and address of such agent to the superintendent of insurance; and shall also annually during the month of January, in such form as the superintendent of insurance shall prescribe, file with him a list of the names and addresses of all its agents authorized to act as such within the state. No person, partnership, association or corporation shall as agent act for any such underwriter in this state, unless such underwriter shall have fully complied with the provisions of this chapter nor unless such agent shall have procured an agent's certificate of authority from the superintendent of insurance. The superintendent of insurance shall file in his office evidence of the issuance of every such certificate to an agent, together with evi-

dence of such agent's authority from each underwriter for whom he is to act. An agent's certificate of authority shall be issued only upon application filed with the superintendent of insurance, in such form as the superintendent of insurance shall prescribe. Every such certificate shall expire on the thirty-first day of December of the calendar year in which the same shall have been issued, but if the application for the renewal of any such certificate shall have been filed with the superintendent of insurance before January first of any year such agent may continue to act as such under such expired certificate until the issuance to him by the superintendent of insurance of a new certificate or until five days after the superintendent of insurance shall have refused to renew such certificate and shall have served notice of such refusal on such agent. Service of such notice may be made either personally or by mail, and, if by mail, shall be deemed complete if such notice is deposited in the post office, postage prepaid, directed to the applicant at the place of residence or business specified in his application. An underwriter, authorized to transact the insurance business within this state, who shall employ as agent any person, partnership, association or corporation not having an agent's certificate of authority from the superintendent of insurance authorizing him to act as agent shall not authorize or permit such agent under his contract of employment to solicit insurance or issue policies for such underwriter until such agent shall have procured a certificate of authority as required by this section. An agent's certificate of authority shall be revoked, or the issue or renewal thereof refused, by the superintendent of insurance if, after due investigation and a hearing either before himself or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that the holder of such certificate, or the applicant therefor, as the case may be, has violated any provision of this chapter, or has been guilty of fraudulent practices. No individual, corporation, partnership or association whose certificate of authority is so revoked, nor any partnership, or association of which such individual is a member, nor any corporation of which he is an officer, shall be entitled to any certificate of authority under this section for one year after such revocation, or, if such revocation be reviewed by certiorari proceedings, for one year after the final determination thereof affirming the action of the superintendent in revoking such certificate. If any such certificate held by a partnership, association or cor-

poration be so revoked, no member of the partnership or association or officer of the corporation shall be entitled to any such certificate for the same period of time, if the superintendent of insurance determine that such member or officer was personally at fault in the matter on account of which the certificate was revoked. The action of the superintendent of insurance in granting or refusing to grant or renew a certificate of authority or in revoking or refusing to revoke such certificate under this section shall be subject to review by writ of certiorari, at the instance of the applicant for such certificate, the holder of a certificate so revoked or the holder of any certificate or the person aggrieved. If the superintendent of insurance shall revoke or shall refuse to renew the certificate of authority of any agent issued under this section and such agent shall apply for a writ of certiorari to review such action, the certificate of authority of such agent shall be deemed to be in full force and effect for all purposes including the right to renewal until the final determination of such certiorari proceedings and all appeals therefrom.

This section shall not apply to any contract of life insurance, nor to any contract of health or accident insurance nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter.

Any person, partnership, association or corporation violating any provision of this section shall, in addition to any other penalty in this chapter provided, forfeit to the people of the state five hundred dollars.

Nothing in this chapter shall be so construed as to prevent any underwriter authorized to do business within this state from authorizing a broker to whom a certificate of authority has been issued under this chapter to act as agent of such underwriter for the collection of premiums.

Added by L. 1913, chap. 7.

Amended by L. 1914, chap. 13. In effect July 1, 1914.

The purpose of the amendment of this section by chapter 13 of 1914 was to broaden the powers of the Superintendent so as to permit him to reject applications for agents' certificates. The law provided that the Superintendent had the right to revoke a license which had already been issued, after due investigation and a hearing, but he had not the right to exclude unworthy applicants for licenses by the same means. The amendment also

exempts agents of health and accident companies from the operation of this section; conditions in the health and accident agency field requiring special treatment, which are provided for by new section 91-a.

Source.—Former § 138, as added by L. 1905, chap. 566. Former § 142, added by L. 1911, chap. 748, as amended by L. 1912, chaps. 1, 172, repealed by L. 1913, chap. 7.

UNCONSTITUTIONAL.—Section 142 inserted by chapter 748 of 1911, as amended by chapter 1 of 1912, the purpose of which is to confine the business of brokers in procuring insurance to those who should make their principal business, or who should be real estate agents or brokers, is unconstitutional. *Hauser v. North British & Mer. Ins. Co.*, 206 N. Y., 455, aff'g 152 App. Div., 91.

Note.—The purpose of the amendment of this section by chapter 7 of 1913 was to make it applicable to agents only, providing for the revocation of an agent's certificate of authority after due investigation and a hearing; the brokers are now brought in under a separate section.—Ed.

§ 143. Broker's certificate of authority.

The term "broker" in this section shall include any person, partnership, association or corporation who, for money, commission or anything of value, acts or aids in any manner on behalf of the insured in negotiating contracts of insurance or placing risks or taking out insurances, including surety bonds. No underwriter, authorized or permitted to do business in this state, or agent thereof, shall pay any money or commission or give or allow anything of value to any person, partnership, association or corporation not a duly authorized agent of such underwriter for or because of his or its negotiating a contract of insurance or placing a risk or taking out insurance or a surety bond, unless such person, partnership, association or corporation is authorized to act as a broker. No person, partnership, association or corporation shall act as broker in the solicitation or procurement of applications for insurance or receive for or because of negotiating a contract of insurance or placing a risk or taking out insurance including a surety bond any money or commission or other thing of value from any underwriter authorized or permitted to do an insurance business in this state, or from an agent of any such underwriter, without first procuring a certificate of authority so to act from the superintendent of insurance.

The superintendent of insurance shall issue such broker's certificate of authority to a person, partnership, association or corporation, applying therefor, who is trustworthy and is competent to transact an insurance brokerage business in such manner as to safeguard the interests of the insured.

A certificate of authority issued to a corporation, partnership or association shall authorize only the officers and directors of the corporation, or the members of the partnership or association, specified in the certificate, each of whom must be qualified to obtain a certificate to act as a broker, and for each of whom a fee must be paid at the times and at the rates specified for individual applicants. The fee to be paid to the superintendent of insurance by an individual applicant for such broker's certificate at the time the application is made, and annually for the renewal thereof, shall be ten dollars, if the applicant maintains a place of business or customarily solicits business in a city of the first class; seven dollars and fifty cents, if the applicant maintains a place of business or customarily solicits business in a city of the second class; five dollars, if the applicant maintains a place of business or customarily solicits business in a city of the third class and two dollars, if the applicant does not maintain a place of business or customarily solicit business in a city. The fee to be paid annually by a nonresident individual applicant who does not maintain a place of business in the state of New York, shall be ten dollars, provided that if such applicant does not solicit business or place insurance covering property or risks situated in a city of the first or second class, the fee to be paid shall be five dollars.

Every broker's certificate of authority shall expire on the thirty-first day of December of the calendar year in which the same shall have been issued, but if an application for the renewal of any such certificate shall have been filed with the superintendent of insurance before January first of any year the certificate of authority sought to be renewed shall continue in full force and effect until the issuance by the superintendent of insurance of the new certificate applied for or until five days after the superintendent of insurance shall have refused to issue such new certificate and shall have served notice of such refusal on the applicant therefor. Service of such notice may be made either personally or by mail, and, if by mail, shall be deemed complete if such notice is deposited in the post office postage prepaid, directed to the applicant at the place of business specified in the application.

Before any broker's certificate of authority shall be issued by the superintendent of insurance there must be filed in his office a written application therefor. Such application shall be in the form or forms and supplements thereof prescribed by the superintendent of insurance and must set forth (1) the name and

address of the applicant, and if the applicant be a partnership or association, the name and address of each member thereof, and if the applicant be a corporation, the name and address of each of its officers and directors; (2) whether any certificate of authority as agent or broker has been issued theretofore by the superintendent of insurance to the applicant, and, if the applicant be an individual, whether any such certificate has been issued theretofore to any partnership or association of which he was or is a member or to any corporation of which he was or is an officer or director, and, if the applicant be a partnership or association whether any such certificate has been issued theretofore to any member thereof, and, if the applicant be a corporation, whether any such certificate has been issued theretofore to any officer or director of such corporation; (3) the business in which the applicant has been engaged for the year next preceding the date of the application, and, if employed by another, the name or names and address or addresses of such employer or employers; (4) such information as the superintendent of insurance may require of applicants to enable him to determine their trustworthiness and competency to transact the insurance brokerage business in such manner as to safeguard the interests of the assured.

An application for a broker's certificate of authority must be signed and verified by the applicant and, if made by a partnership or association, by each member thereof and if made by a corporation by each officer and director thereof to be authorized thereby to act as a broker.

A corporation, association or partnership to whom a certificate of authority shall have been issued by the superintendent of insurance under this section may at any time make an application to the superintendent of insurance for the issuance of a supplemental certificate of authority authorizing additional officers or directors of the corporation or members of the partnership or association to act as brokers, and the superintendent of insurance may thereupon issue to such corporation, association or partnership a supplemental certificate accordingly upon the payment of an additional fee for each member or officer or director thereby authorized to act as a broker.

A certificate issued under this section shall be revoked by the superintendent, if after due investigation and a hearing either before him or before any salaried employee of the insurance department designated by him whose report he may adopt, he determines that the holder of such certificate (1) has violated

any provision of the chapter by any act or thing done in respect to insurance for which such certificate is required; or (2) has made a material misstatement in the application for such certificate; or (3) has been guilty of fraudulent practices; or (4) has demonstrated his incompetency or untrustworthiness to transact the insurance brokerage business for which such certificate of authority shall have been granted by reason of anything done or omitted in or about such business under the authority of such certificate.

No individual, partnership, association or corporation whose certificate of authority is so revoked nor any partnership or association of which such individual is a member, nor any corporation of which he is an officer or director shall be entitled to any certificate of authority under this section for a period of one year after such revocation, or, if such revocation be reviewed by certiorari proceedings, for one year after the final determination thereof affirming the action of the superintendent in revoking such certificate. If any such certificate held by a partnership, association or corporation be so revoked, no member of the partnership or association or officer or director of the corporation shall be entitled to such a certificate for the same period of time, if the superintendent of insurance determines and finds that such member or officer or director was personally at fault in the matter on account of which the certificate was revoked. The holder of any such certificate or any person aggrieved may file with the superintendent of insurance a verified complaint setting forth facts from which it shall appear that any such certificate ought to be revoked. The superintendent must thereupon, after investigation and a hearing as herein provided, determine whether such certificate shall be revoked.

If an application for a certificate of authority under this section be rejected or such a certificate be revoked by the superintendent of insurance notice thereof shall forthwith be served on the applicant or on the holder of such certificate either personally or by mail, and, if by mail, such service shall be complete if such notice be deposited in the post-office postage prepaid, directed to the applicant or the holder of such certificate, as the case may be, at the place of business specified in the application or certificate.

The action of the superintendent of insurance in granting or refusing to grant or to renew a certificate of authority or in revoking or refusing to revoke such a certificate shall be subject

to review by writ of certiorari, at the instance of the applicant for such certificate, the holder of a certificate so revoked or the holder of any such certificate or the person aggrieved. If the superintendent of insurance shall revoke or shall refuse to renew the certificate of authority of any broker issued under this section and such broker shall apply for a writ of certiorari to review such action, the certificate of authority of such broker shall be deemed to be in full force and effect for all purposes, including the right to renewal, until the final determination of such certiorari proceedings and all appeals therefrom, provided the fee for such certificate be paid.

This section shall not apply to any contract of life insurance nor to any contract of insurance upon or in connection with marine or transportation risks or hazards other than contracts for automobile insurance, nor to contracts of insurance upon property located without this state, nor to contracts made by persons, partnerships, associations or corporations authorized to do business under articles five, six, seven and nine of this chapter.

Any person, partnership, association or corporation violating any of the provisions of this section shall in addition to any other penalty in this chapter provided, forfeit to the people of the state five hundred dollars.

Source.—Former § 139, as added by L. 1905, chap. 566, repealed by L. 1910, chap. 638.

Amended by L. 1913, chap. 12, and L. 1915, chap. 56. In effect January 1, 1916.

Note.—The purpose of the addition of this section by chapter 12 of 1913 was to compel all applicants, for certificates of authority to do business as insurance brokers to meet the test of trustworthiness and competency proposed by the insurance department as a condition to receiving their license; this section takes the place of one, declared unconstitutional.—Ed.

A corporation seeking a certificate of authority to do business as an insurance broker must pay a fee of ten dollars for each of the officers or directors who are to be authorized to act in behalf of the corporation as brokers, regardless of the fact that a partnership composed of the same individuals as are officers of the corporation has previously paid a fee for authority to act in the capacity of insurance broker. Attorney-General Rep., February 1, 1915.

§ 144. Fees not to be included in consideration for fire insurance.

It shall not be lawful hereafter for any fire insurance company, or for any officer, manager, agent or other representative of any such company, to include in the sum charged or designated in

any policy, as the consideration for insurance, any fee, compensation, charge or perquisite whatsoever.

Source.— L. 1892, chap. 641, § 1.

A person who agrees to procure insurance for another, but who is not connected with the company issuing the policy, does not come within the provisions of this section. *Tanenbaum v. Rosenthal*, 44 App. Div., 431.

Brokers for the insured are not subject to the prohibition of section 1. *Romberg v. Kouther*, 27 Misc., 227.

§ 145. Report of consideration to company.

Every agent or other representative of any fire insurance company, issuing a policy on its behalf, on property in this state, shall report to the company the exact consideration charged and written in the policy, as a premium for the risk assumed.

Source.— L. 1892, chap. 641, § 2.

§ 146. Fees and charges to be indorsed on policy.

In all cases where a policy fee, survey fee, or other fee or charge in addition to the consideration as premium written in the policy, is made against, or collected from the assured by the agent, or other representative of any fire insurance company, such agent or representative shall indorse the amount of such fee or charge, and the nature and particulars thereof, upon the policy, and shall report the amount and particulars of any such fee or charge to the company on behalf of which such policy is issued.

Source.— L. 1892, chap. 641, § 3.

§ 147. Penalty for violation by company.

Any fire insurance company violating the provisions or failing to comply with the requirements of section one hundred and forty-four, shall upon complaint made by the superintendent of the insurance department or any citizen of this state, be liable to a fine of not less than twenty-five dollars nor more than one hundred dollars for the first offense, and of not less than one hundred dollars nor more than two hundred and fifty dollars for each subsequent offense.

Source.— L. 1892, chap. 641, § 4.

§ 148. Penalties for violation by officers and agents.

Any officer, manager, agent or other representative or either of them of any fire insurance company violating any of the

provisions or failing to comply with any of the requirements of the last four sections is guilty of a misdemeanor, and upon complaint made by the superintendent of the insurance department, or any citizen of this state, upon conviction thereof, shall be liable to a fine of not more than fifty dollars for the first offense, and not more than one hundred dollars for each subsequent offense or to imprisonment for not exceeding three months, or both.

Source.—L. 1892, chap. 641, § 5, as amended by L. 1896, chap. 841, § 1.

§ 149. Authorization of foreign mutual fire insurance corporations.

Every mutual fire insurance company or association incorporated under the laws of any other state of the United States may be permitted to do business in this state by the superintendent of insurance on filing with him the following:

a. A certified copy of its articles of incorporation or association and of its by-laws.

b. A consent, duly executed, appointing the superintendent of insurance to be the true and lawful attorney for such company or association in and for this state, upon whom all legal process in any action or proceeding against the company or association may be served with the same effect as if it was a domestic company or association. Service upon such attorney shall thereafter be deemed service upon the company or association.

c. An agreement that it will pay the taxes provided for in section one hundred and forty-nine-a of this chapter, and that it will furnish any further information as to its financial condition, as the superintendent of insurance shall require.

d. And each such company shall pay to the superintendent of insurance the fees required by section six of this chapter.

Provided, that no such certificate of authority shall be granted unless such company shall (a) have at least five million dollars of insurance in force in not less than two hundred separate risks; and (b) shall have transacted a fire insurance business in its home state for at least ten years; and (c) shall have had insurance in force in at least the amount of five million dollars in each of the five years immediately preceding its application for admission to

do business in this state; and (d) shall have and maintain a reserve fund equal to the total unearned premiums on the policies in force calculated on the gross sum without any deduction on any account charged to policyholders on each respective risk from the date of the issue of the policy; and (e) in addition to maintaining such unearned premium reserve fund, shall either keep on deposit for the benefit of all its policyholders with the superintendent of insurance of this state or with the auditor, comptroller or general fiscal officer of the state under the laws of which it is incorporated, the sum of two hundred thousand dollars, or shall have a surplus or other net assets of at least fifty thousand dollars and in addition contingent assets of at least fifty thousand dollars in the form of the obligations of policyholders to pay such amount when lawfully assessed therefor; and (f) shall have net and contingent assets which together with the unearned premium fund shall equal one per centum of the total insurance in force; and (g) in the event that such company does not keep on deposit the sum of two hundred thousand dollars as in "e" aforesaid it shall provide in all policies issued by it that the policyholder is liable, in addition to the original premium paid, to assessment in an amount at least equal to one year's premiums; provided, further, that no such company shall be exposed to loss to an amount exceeding ten per centum of its actual net and contingent assets upon property not protected by automatic sprinklers situated within the boundaries of one city block or on one group of buildings composed of attached or adjacent buildings which have less than sixty feet of clear space at all points between such buildings and other buildings; provided, further, that the certificate of authority granted by the superintendent of insurance pursuant to the provisions of this act to such insurance corporation to do business in this state shall not remain in force for a longer period than one year and that whenever the condition of any such corporation to which a certificate of authority has been granted is such that it cannot meet all the requirements of this section the superintendent of insurance shall forthwith revoke such certificate. The deposit or the surplus of any such company so authorized to do business in this state, to the extent of the minimum amount thereof required by this section shall be in-

vested and kept invested in securities of the kind and character in which domestic or foreign companies are required to invest as minimum capital investments by section sixteen of this chapter, except that bonds and mortgages on real estate shall not be accepted as deposit securities to be held by the superintendent of insurance of this state. Any such company so admitted to do business may in addition to insuring property against loss or damage by fire also insure any goods or premises against loss or damage by water caused by the breakage or leakage of sprinklers, pumps, water pipes, or plumbing and its fixtures and against accidental injury from other cause than fire or lightning to such sprinklers, pumps, water pipes, plumbing and fixtures.

Source.—Added by L. 1909, chap. 286.

Amended by L. 1911, chaps. 161 and 765.

§ 149a. Premium or assessment tax.

Every mutual fire insurance company or association authorized to do business in this state pursuant to section one hundred and forty-nine of this chapter shall, in lieu of all other taxes on premiums, annually, on or before the first day of February of each year, pay a tax of one per centum on all gross premiums or assessments collected or received by it or them for such insurance upon property situate within this state during the preceding year ending the thirty-first day of December to the superintendent of insurance, except that any company so authorized to do business in this state which is incorporated under the laws of any other state, which taxes such company therein upon the gross premiums or assessments collected by it less that portion of said gross premiums or assessments returned on policies expired or canceled, shall not be required to pay under this section any different or higher rate, provided, however, that in no event shall such tax be less than three per centum of the net cost of insurance to the policyholder. On or before the first day of February of each year every such company or association shall file with said superintendent a detailed statement showing the gross amount of premiums and assessments collected during the preceding year, for insurance upon property located in this state and specifying the amounts of premiums and assessments so

collected by city, town, village or fire district in which the property covered by such insurance is located. In case any such company or association shall neglect or refuse to make and file such report, or pay the tax imposed by this section, its certificate of authority to do business in this state shall be revoked by the superintendent of insurance and it shall forfeit the sum of one hundred dollars for each day after the first day of February of each year that it shall omit to make and file such report, or shall neglect to pay the tax imposed by this section, which sum shall be collected in an action in the name of the people of the state of New York to be prosecuted by the superintendent of insurance and collected by him. After the neglect or refusal of such company or association to make and file such report, or pay such tax, such company or association or its agents shall not effect any insurance on any property in this state.

Source.—Added by L. 1909, chap. 286.

Amended by L. 1911, chap. 161.

§ 149b. Agents.

No person shall act within this state for any mutual fire insurance company or association, organized under the laws of any other state of the United States, in placing risks, adjusting losses, fixing rates, or inspecting risks, unless such company or association is authorized to do business within this state. Any person violating the provisions of this section shall be guilty of a misdemeanor.

Source.—Added by L. 1909, chap. 286.

§ 149c. Distribution of annual tax.

All moneys received by the superintendent of insurance under the provisions of section one hundred and forty-nine-a of this chapter shall be distributed by him on April first of each year after deducting the expenses of the collection and distribution thereof, as follows: Ten per centum thereof to the Firemen's Association of the State of New York for the support and maintenance of the Firemen's Home at Hudson, New York, and the balance to the various associations, cities, villages and fire districts

in the same manner and to the same extent as the tax imposed by section one hundred and thirty-three of this chapter is now received by them, except that in the cities of New York and Buffalo, he shall pay the same to the officers and associations now receiving the tax imposed on foreign fire insurance companies under the provisions of the charters of said cities. The superintendent of insurance shall appoint, for a term not exceeding his own term of office, a suitable and competent person to collect and distribute the tax imposed by section one hundred and forty-nine-a of this chapter. The person so appointed shall receive such compensation for his services and disbursements as the superintendent of insurance shall fix, but the same shall be payable only from the moneys which the said superintendent shall receive under the provisions of said last mentioned section.

Source.—Added by L. 1909, chap. 286.

ARTICLE IV.

MARINE INSURANCE CORPORATIONS.

SECTION 150. Incorporation.

151. Subscriptions to stock.
152. Restrictions as to capital stock and premium notes.
153. Increase of capital by mutual corporations.
154. Cash capital of mutual corporations.
155. Rights and liabilities of holders of cash capital.
156. Certificates convertible into stock.
157. Amendment of charter.
158. Extension of charter.
159. Change in plan of insurance.
160. Charges for insurance upon canals of the state.
161. Agencies beyond the United States.
162. Lloyds or individual underwriters.

SECTION 150. Incorporation.

Thirteen or more persons may become a corporation for the purpose of making insurance upon vessels, freights, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank-notes, bills of exchange, and other evidences of debt, bottomry and respondentia interests, and every insurance appertaining to or connected with marine risks and risks of transportation and navigation, including the risks of lake, river, canal and inland transportation and navigation, insurances upon automobiles, whether stationary or being operated under their own power, which shall include all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, and loss by burglary or theft or both, but shall not include insurances against loss by reason of bodily injury to the person, and of reinsuring any risks taken by it, by making, acknowledging and filing in the office of the superintendent of insurance a declaration signed by all of them, stating their intention to form a corporation for one or more or all of such purposes, with a copy of the charter proposed to be adopted by it, which charter shall set forth the name of the corporation, the place where its principal office shall be located, the mode in which its corporate powers are to be exercised, and of electing directors,

each of whom, if a stock corporation, shall be the owner in his own right of five hundred dollars par value of its stock and a majority of whom shall be citizens of this state, the mode of filling vacancies in the office of director, the period for the commencement and termination of its fiscal year, the amount of its capital or capital stock and the number of shares into which it shall be divided, if a stock corporation. Thereupon such persons and all others who shall become stockholders or members thereof, shall be a corporation by the name expressed in the charter.

No such corporation shall commence the transaction of the business of insurance until after publication of a notice of its intention to do so, once a week for at least six weeks, in a public newspaper in the county in which it is proposed to be located, nor if a stock corporation, until its capital stock shall all have been paid in in cash. Every such corporation shall continue in existence for thirty years, or for such less time as may be specified in its charter. No such corporation shall directly or indirectly deal or trade in buying or selling goods, wares or merchandise, or other commodities, except such as may have been insured by it, and such as may be sold under judicial process or otherwise in which or in the profits of the sale of which it may be interested by reason of having previously become insurers of the same or of some share or portion thereof.

Source.—Former § 150, as amended by L. 1907, chap. 206; originally revised from L. 1849, chap. 308, §§ 1-3, 10, as amended by L. 1867, chap. 574 and §§ 15, 18; L. 1867, chap. 442, § 1.

Amended by L. 1909, chap. 240; L. 1910, chap. 168, and L. 1911, chap. 126.

See § 6, ante. Fees to superintendent for filing declaration.

See § 9, ante. Certificate of authorization of superintendent.

See § 10, ante. Certificate of attorney-general; corporate names.

See § 12, ante. Minimum capital stock of marine stock company.

See § 13, ante. Deposit of securities with superintendent.

See chap. 733 of 1900. Reincorporation of foreign moneyed corporations.

The subscription agreement must, under the statute, amount to something more than an underwriting agreement to furnish so much capital to, or to acquire so much business for, the company. Attorney-General Rep., April 6, 1916.

A corporation under § 150 relating to marine insurance corporations is not authorized to insure a pier in the North river, or structures thereon. Attorney-General Rep., May 6, 1911.

QUORUM.—A quorum of directors must be a majority of all the directors, unless otherwise provided in charter or special law. By-laws cannot change this rule. In re New Amsterdam Cas. Co., Attorney-General Rep., 1900, page 253.

§ 151. Subscription to stock.

After the publication of such notice and the filing of such declaration and charter, the corporation may open books for subscription to its capital stock and keep the same open until the full amount specified in the charter is subscribed; or, if its business is to be conducted on the plan of mutual insurance, it may open books to receive propositions and enter into agreements for insurance in the manner and to the extent hereinafter specified

Source.—Former § 151; originally revised from L. 1849, chap. 308, § 4.

See § 53, Stock Corporation Law, chap. 61 of 1909. Subscription to capital stock.

See § 660, Penal Law. Frauds in organization of corporations.

See § 662 et seq., Penal Law. Fraudulent issue of stock.

§ 152. Restrictions as to capital stock and premium notes.

No such corporation shall be organized in the county of New York, or in the county of Kings, with a smaller capital than fifty thousand dollars, nor shall any such corporation formed for the purpose of doing business on the plan of mutual insurance, commence business if located in the county of New York, or county of Kings, until agreements have been entered into for insurance with at least one hundred applicants, the premiums on which shall amount to at least three hundred thousand dollars, and notes have been received in advance for the premiums on such risks, payable at the end of or within twelve months from the date thereof, which notes shall be considered as a part of its capital, and shall be known as capital stock notes and shall be valid, negotiable and collectible for the purpose of paying any losses which may occur or otherwise.

No such mutual insurance corporation shall in any other county of the state commence business until such agreements have been entered into, the premiums on which shall amount to one hundred thousand dollars and notes received therefor, which notes shall be payable and shall be liable for and used as above specified.

Any such mutual insurance corporation heretofore or hereafter organized may issue policies providing that the assured in such policies shall not participate in the profits of the corporation, and that in lieu of scrip the corporation may stipulate for and take a net premium, or may make a cash deduction from the premiums paid on such non-participating policies, though such mode of doing business may not be declared in its charter.

Source.—Former § 152; originally revised from L. 1849, chap. 308, § 5 and § 10, as amended by L. 1867, chap. 574.

See § 12, ante. Minimum capital stock of marine insurance corporations.

The subscription agreement must, under the statute, amount to something more than an underwriting agreement to furnish so much capital to, or to acquire so much business for, the company; it must be upon specific automobiles. Attorney-General Rep., April 6, 1916.

§ 153. Increase of capital by mutual corporations.

Any domestic mutual marine insurance corporation having its principal office in the city of New York may increase its capital or fund on the amount of accumulated net profits, which it is permitted to retain for the benefit and security of its policyholders, to any amount which shall be deemed expedient by its board of directors, but if there is in the charter of such corporation any limitation of its capital or fund, or the amount of net profits which it has the power to accumulate and retain, such increase shall not be made unless a written consent thereto under the seal of the corporation, by a resolution of the board of directors, certified by the secretary, shall first be filed in the office of the superintendent of insurance, and the privilege of retaining profits over one million dollars shall not be exercised by any corporation availing itself of the provisions of this section, until a sufficient sum shall be applied by such corporation according to the provisions of its charter, towards the redemption of all certificates or premiums heretofore issued and now outstanding.

Source.—Former § 153; originally revised from L. 1849, chap. 308, § 22, as added by L. 1855, chap. 292.

§ 154. Cash capital of mutual corporations.

Any domestic mutual marine insurance corporation may create or unite with its existing corporate funds, if it has any such funds, a cash capital of not less than three hundred thousand dollars, to be divided into shares of one hundred dollars each, to be issued to

such persons as shall subscribe and pay for the same, which shall be transferable only on the books of the corporation, subject to such regulations as the directors shall from time to time prescribe.

The profits of the business of such corporation, after setting apart a sufficient sum to pay six per cent per annum upon the cash capital and the interest accruing upon any outstanding scrip or certificates, shall be divided between the stockholders and others entitled by its charter or articles of association to participate in its profits in the following manner, viz.: One-third thereof, or such other proportion not exceeding that rate as may be determined and agreed upon at the time when the subscriptions to the cash capital thereof are made, to the stockholders in cash, and the remainder thereof to the persons entitled by its charter or articles of association to participate in its profits, to whom scrip certificates therefor shall be issued as provided in such charter or articles. The corporation may exclude from the computation of premiums entitled to participate in such profits, premiums or risks on which loss shall have happened.

The fund represented by the scrip shall constitute a surplus or reserve for the security and payment of losses, and be liable for any excess of losses and expenses above the earned premiums of any year. Each later annual issue of scrip shall be first reduced and wholly canceled before any previous annual issue is at all reduced, and all issues of scrip shall be liable to reduction and cancellation before the capital stock shall be encroached upon.

The provisions of this section and of the two following sections shall not be considered to extend the original charter of any corporation created by a special act of the legislature, or to apply to or revive any charter under which any corporation is not actually transacting business.

Source.—Former § 154; originally revised from L. 1849, chap. 308, § 21, as amended by L. 1857, chap. 38; L. 1857, chap. 28, §§ 1, 2, 7.

§ 155. Rights and liabilities of holders of cash capital.

The holders of the cash capital paid in shall be entitled to one vote either in person or by proxy at all elections of the corporation for each share of stock held by them respectively. No person shall be entitled to vote at any election by reason of being the holder of a policy issued after such cash capital is paid in, or of

being the holder of any scrip or certificate of profits of such corporation issued after that time, unless otherwise provided for in the articles of subscription to such cash capital. Each subscriber to the cash capital shall be individually liable to the extent of his subscription for the debts of the corporation until the shares of stock subscribed for by him shall have been paid in cash to the corporation.

Source.—Former § 155; originally revised from L. 1849, chap. 308, § 19; L. 1857, chap. 28, §§ 4, 6; L. 1884, chap. 95, § 2.

See § 25 et seq., Stock Corporation Law, chap. 564 of 1890. Directors and officers and their election.

See § 56 et seq., Stock Corporation Law, chap. 61 of 1909. Liability of stockholders and the limitation of their liability.

§ 156. Certificates convertible into stock.

Whenever the cash stock paid in, as provided in section one hundred and fifty-four, shall amount to three hundred thousand dollars or more, the directors may, by a vote of three-fourths of the whole number, convert the certificates of profits, in whole or in part, into cash stock; commencing, if in part, with the certificates of the year of earliest issue outstanding, and so on in succession, upon application therefor being made to the corporation by the holders thereof, within such period of time and at such a price not exceeding its par value, and under such conditions and regulations as the trustees may prescribe for that purpose. Whenever the cash stock shall amount to five hundred thousand dollars or more, the directors may, by a like vote, call in and redeem and cancel the outstanding certificates of profits and make the corporation wholly a cash stock corporation, dividing all its profits to the cash stockholders; and the directors shall have power to make all necessary by-laws and regulations to conform to such changes in the business of the corporation.

Such corporation shall not apply any of its funds or profits to the redemption or payment of any certificate of profits, if by such payment the aggregate of its cash capital and its accumulated profits together shall be reduced below the amount which shall be fixed by its by-laws or articles of association, and such aggregate amount shall not be fixed below the sum of one million dollars, in addition to the amount of cash stock thereof.

Source.—Former § 156; originally revised from L. 1857, chap. 28, §§ 3, 5.

§ 157. Amendment of charter.

Any domestic marine insurance corporation may amend its charter so as to enable it to transact all such business as can be transacted by marine insurance corporations under the laws of the state, by filing in the office of the superintendent of insurance a copy of its charter as amended, with the written consent thereto of three-fourths in amount of its stockholders, if a stock corporation, or, if a mutual corporation, of two-thirds of its directors. Thereupon such proceedings shall be had as are required by law to be taken upon the filing of an original declaration and charter, and such corporation shall not transact any business under such amended charter until it shall have obtained the certificate of authority required by law from the superintendent of insurance.

Source.—Former § 157; originally revised from L. 1880, chap. 222, § 1.

See § 37, ante. Corporations heretofore formed brought within the provisions of the Insurance Law.

See § 100, Statutory Construction Law, chap. 27 of 1909, as to effect of repeal and re-enactment of prior statutes.

§ 158. Extension of charter.

Any domestic marine insurance corporation may at any time have its original charter extended for a period not exceeding thirty years, by filing in the office of the superintendent of insurance a copy of such charter as amended and a consent thereto signed by all of its directors or by two-thirds of them, and not less than thirteen in number. It shall not be authorized to transact any business under its extended charter until the same proceedings have been taken as are required by law upon the filing of an original declaration and charter, and until the certificate of the superintendent required by law shall have been obtained authorizing it to transact business thereunder.

Any corporation whose charter has been so amended and which has obtained the authority of the superintendent to transact business thereunder may continue its business upon the same plan, and without any interruption of its business or distribution of its assets, as fully and with like effect as if it had been originally incorporated for the extended period.

Source.—Former § 158; originally revised from L. 1849, chap. 308, § 14, as amended by L. 1889, chap. 424; L. 1867, chap. 442, § 2, as amended by L. 1868, chap. 731.

See § 37, General Corporation Law, chap. 28 of 1909. Extension of corporate existence.

A company, incorporated by special act before the passage of the first general insurance law in 1849, may extend its charter in accordance with section 158 of the Insurance Law and continue to operate under its original charter, subject to the limitations contained in section 37 of the Insurance Law. Attorney-General Rep., March 21, 1912.

§ 159. Change in plan of insurance.

Any domestic mutual marine insurance corporation may, by conforming its charter and otherwise proceeding in accordance with the laws of the state, with the consent of three-fourths of the whole number of its directors and with the written consent of three-fourths of the whole amount of the outstanding scrip, after giving notice once a week for six weeks of its intention in two newspapers, to be designated by the superintendent of insurance, change the plan of its business from that of a mutual insurance corporation to that of a capital stock corporation, by converting the outstanding certificates of profits of those so consenting into capital stock in shares of not less than fifty dollars each, in such period of time and at such price not exceeding its par value and under such conditions and regulations as such directors may fix and establish for that purpose; and, may, upon application therefor being made to the corporation by the holders thereof, convert the remaining outstanding certificates of profits in whole or in part into capital stock, or, at the option of the holders, redeem the same at the market price or value thereof, to be determined by a disinterested person appointed by a judge of a court of record of this state. The capital stock thus created shall in no case exceed the cash value of the assets of the corporation, which shall not be less than two hundred and fifty thousand dollars.

No such corporation shall change the plan of its business to that of a capital stock corporation until the superintendent of insurance shall first have examined into the cash value of its assets and shall have issued his certificate that the corporation has complied with the provisions of this section and is in a safe and proper condition to continue the business of marine insurance, a copy of which certificate shall be recorded in the office of the superintendent and in the clerk's office of the county where its principal office is located.

Source.—Former § 159; originally revised from L. 1884, chap. 95, § 1.

§ 160. Charges for insurance upon canals of the state.

No marine insurance corporation doing business in this state shall demand or receive upon any policy of insurance issued by it upon property in transit upon the canals of the state, for the premium on such policy, any sum of money as compensation, which shall include in any case over fifteen per cent thereof, as a price or remuneration of agents of the corporation for the business of obtaining such insurance on a salary or commission, or in any capacity whatever. No such corporation shall pay beyond the amount of fifteen per centum of the premiums so received on account of any such policy as the commission or remuneration of the agent or agents obtaining the insurance, and no part of the eighty-five per centum of the premium retained by the corporation shall be paid to any one except to the regular officers of the corporation for its benefit, and no shipper or middleman or other person shall either directly or indirectly be paid or receive any portion of such premium.

An agent of any such corporation, or other person, shall not charge or receive, directly or indirectly, from any person or persons for insurance of such property, any more than the regular rates of premium fixed by the corporation for the insurance of such property, or charge or receive any other or greater sum for such insurance than the amounts payable to the corporation and its agents as provided in this section. In all reports to the superintendent of insurance required by law every such corporation shall verify under oath to such superintendent in such form as he may prescribe, that the corporation has performed and fully carried out the provisions of this section.

Any agent, shipper or other person who shall violate any of the provisions of this section shall forfeit to the people of the state the sum of one hundred dollars, one-half of which shall be paid to the person injured, if he shall complain; the other half, or the whole thereof when any other than the injured person shall complain, shall be paid to the treasury of the county in which the offense was committed, for the benefit of the poor of the city or town in which such offense was committed. Any corporation violating the provisions of this section shall be deemed to have forfeited its charter,

and the attorney-general, upon information from the superintendent of insurance, or upon the complaint of any individual who shall give security, to be approved by the superintendent, for the payment of any costs or expenses on the part of the state, shall proceed against any such corporation so violating the provisions of this section to enforce the forfeiture of its charter. The court in which any such suit or proceeding may be instituted may, upon final judgment instead of decreeing the dissolution of the corporation, require it to pay such sum as a penalty for such violation not less than five hundred dollars, nor more than five thousand dollars, as the court may in its discretion impose, and direct in the judgment that in case such penalty is not paid within a time therein specified the corporation shall be dissolved.

Source.—Former § 160; originally revised from L. 1881, chap. 471, as amended by L. 1883, chap. 455.

§ 161. Agencies beyond the United States.

Any domestic marine insurance corporation may establish and maintain one or more agencies beyond the United States for the transaction of its lawful business upon such terms and conditions as it may prescribe, and may omit from its annual report the transactions at any such agency in Asia or Europe for five months previous to the time when the report is made, but such omitted transactions shall be included in the next annual report.

Source.—Former § 161; originally revised from L. 1852, chap. 123.

§ 162. Lloyds or individual underwriters.

Source.—Former § 162, as amended by L. 1905, chap. 566.

Repealed by L. 1910, chap. 638 (in effect Jan. 1, 1911).

ARTICLE V.

TITLE AND CREDIT GUARANTY CORPORATIONS.

SECTION 170. Incorporation.

171. Subscriptions to capital stock.
172. By-laws.
173. Certificate of superintendent.
174. Certificate of payment of capital stock.
175. Directors.
176. Investment of capital and funds of a title guarantee corporation.
177. Conditions requisite to commencing business of a credit guaranty corporation.
178. Powers of credit guarantee corporations.
179. Merger.
180. Additional powers of certain title guaranty companies.
181. May execute bonds and undertakings.
182. Issuance of certificate of solvency by superintendent of insurance.
183. Supreme court may require statement to be filed.

SECTION 170. **Incorporation.**

Five or more persons may form a corporation for one of the following purposes:

1. To examine titles to real property and chattels real, to procure and furnish information in relation thereto, make and guarantee the correctness of searches for all instruments, liens or charges affecting the same, guarantee or insure the payment of bonds and mortgages, or notes of individuals or partnerships secured by mortgages upon real property situated in this or any other state, and bonds, notes, debentures and other evidences of indebtedness of solvent corporations secured by deed of trust or mortgage upon real property situated in this or any other state, invest in, purchase and sell, with such guarantee or with guarantee only against loss by reason of defective title or incumbrances, bonds and mortgages, and notes of individuals or partnerships secured by mortgages upon improved and unincumbered real property situated in this or any other state worth fifty per centum more than the amount loaned thereon, and bonds, notes, debentures and other evidences of indebtedness of solvent corporations secured by deed of trust or mortgages upon improved and unincumbered real property situated in this state or outside of this

state worth fifty per centum more than the amount loaned thereon, and guarantee and insure the owners of real property and chattels real and others interested therein against the loss by reason of defective titles thereto and other incumbrances thereon which shall be known as a title guaranty corporation; or

1-a. To guarantee the validity and legality of bonds or other evidences of indebtedness issued by any state or by any city, county, town, village, school district, municipality or other civil division of any state, or by any private or public corporation; to act as registrar or transfer agent, but not fiscal of any such corporation, and to transfer and countersign its certificates of stocks, bonds or other evidences of indebtedness. Such corporation shall be known as a securities guaranty corporation and shall be governed by and subject to the provisions of law applicable to a title guaranty corporation organized under this article; or

2. To guarantee and indemnify merchants, traders and those engaged in business and giving credit from loss and damage by reason of giving and extending credit to their customers, and those dealing with them, which shall be known as a credit guaranty corporation, by making, acknowledging and filing a certificate stating:

1. The name of the proposed corporation.
2. The kind of corporation to be formed and its purposes.
3. The amount and description of the capital stock.
4. The location of its office.
5. The duration of the corporation, not exceeding fifty years.

No credit guaranty corporation or securities guaranty corporation shall be formed for the transaction of business in this state, with a smaller capital than two hundred and fifty thousand dollars. No title guaranty corporation shall be formed with a smaller capital than one hundred and fifty thousand dollars, which shall be divided into shares of one hundred dollars each. Such certificate shall be filed in the office of the superintendent of insurance, who shall thereupon issue a license to the persons making such certificate, empowering them as commissioners to open books of subscription to the capital stock of the corporation at such times and places as they may determine.

Any corporation heretofore organized under subdivision one of this section shall have all the powers conferred by such subdivision as amended hereby.

Source.—Former § 170, as amended by L. 1900, chap. 266; L. 1901, chap. 677; L. 1904, chap. 543; originally revised from L. 1885, chap. 538, §§ 1, 3, 4, 10, 28; L. 1886, chap. 611, §§ 1, 2, 3, 5, 14.

Amended by L. 1909, chap. 302; L. 1911, chap. 525; L. 1913, chaps. 81 and 215.

Note.—This section was amended by chapters 81 and 215 of 1913. The amendment by chapter 81 went into effect March 15, 1913, and consisted of adding the words "or securities guaranty corporation" in subdivision 5, increased the capital from \$150,000 to \$250,000 and in the same subdivision struck out the words "or with a larger capital than \$10,000,000." The amendment by chapter 215 of 1913 went into effect April 4, 1913, and amended subdivision 1 by permitting insurance on notes secured by mortgages, made the same changes in subdivision 5 as were made by chapter 81 and added the last paragraph.—Ed.

See § 6, ante. Fees to superintendent for filing declaration.

See § 9, ante. Certificate of authorization of superintendent.

See § 10, ante. Certificate of attorney-general; corporate names.

See § 11, ante. Examination by superintendent as to capital.

See § 13, ante. Deposit of securities with superintendent.

See § 174, post. Certificate of payment of capital stock.

See § 177, post. Conditions requisite to commencing business.

See chap. 733 of 1900. Reincorporation of foreign moneyed corporations.

A corporation may not be organized under the Business Corporations Law to engage in the business of examining and certifying the titles to real property. Attorney-General Rep., 1912, page 345.

TITLES.—A corporation organized for the purpose of examining and guaranteeing titles to real estate, which, in all matters relating to conveying and searching titles assumes to discharge the same duties as an individual conveyancer or attorney, is subject to the same responsibilities, and its duty to its employer is governed by the principles applicable to attorney and client. *Ehmer v. Title G. & T. Co.*, 156 N. Y., 10.

A policy of insurance issued by a title guarantee corporation containing a provision "that defects and incumbrances arising after the date of this policy, or created or suffered by the insured, and assessments not confirmed at the date of this policy, are not to be deemed covered by it," covers a confirmed assessment existing at the date of the policy, although the confirmation took place after the grantee took possession under his deed. *Trenton Co. v. Title Guarantee Co.*, 50 App. Div., 490.

A corporation organized under the business corporation law for the purpose of conducting the business of a mercantile reporting company is entitled to amend its certificate of incorporation so as to assume a responsibility to its clients for the accuracy of its reports and such amendment does not contemplate an insurance business within the meaning of subdivision 2 of § 170. *People ex rel. Daily Credit Service Corp. v. May*, 162 App. Div., 215.

A company "to guarantee and indemnify banks from loss and damage by reason of their having given an extended credit to customers in the regular course of business," is authorized under this section. Attorney-General Rep., 1906, page 554.

A title company, organized to do business specified in § 170, subd. 1, cannot accept deposits of money from individuals and issue in exchange therefor cer-

tificates of indebtedness, which will provide that the moneys received shall be merged with the general funds and invested in mortgage loans, the holders of the certificate to receive 4 per cent interest and the company to have the option to give the holder at any time a guaranteed mortgage at $5\frac{1}{2}$ per cent equal to the amount of such deposit, or a certificate giving the holder an interest in a larger guaranteed mortgage at the same rate, which interest shall be equal to the amount of such deposit. Attorney-General Rep., Dec. 6, 1910.

CERTIFICATE.—The superintendent of the insurance department may, in his discretion, issue to a foreign credit guarantee insurance company a certificate authorizing it to transact business in this state. Attorney-General Rep., 1892, page 375.

INCORPORATION.—Two-thirds of the persons executing a certificate of incorporation of a credit guarantee company must be citizens of the United States, and a majority of them residents of this state. In re Com. Credit Guar. Co., Attorney-General Rep., 1893, page 139.

BUSINESS.—A foreign company should not be allowed to do business, both as provided by art. V and by § 70, subd. 4 of the Insurance Law. In re Ocean Acc. & Guar. Co., Attorney-General Rep., 1897, page 230.

A proposed mortgage insurance company, licensed by the superintendent of insurance to open stock subscription books, cannot organize on a smaller capital than that specified in the license. Reduction of capital stock can be effected only in the manner specified in §§ 45 and 46 of the Stock Corporation Law. In re N. Y. Mortgage Ins. Co., Attorney-General Rep., 1893, page 84.

CREDIT COMPANY.—Credit guaranty companies are moneyed corporations, and cannot be formed under the provisions of the Business Corporation Law. In re Com. Guar. Co., Attorney-General Rep., 1893, page 308.

TITLE COMPANY.—A foreign title-searching company is a moneyed corporation, and cannot be authorized by the secretary of state to do business in this state. In re New Jersey Title, etc., Co., Attorney-General Rep., 1893, page 92.

BONDS.—Bonds of a real estate title and mortgage guarantee corporation secured by mortgages deposited with a trustee under an agreement permitting substitution of mortgages is lawful. Attorney-General Rep., May 1, 1915.

§ 171. Subscriptions to capital stock.

Such commissioners shall open books for subscription to the capital stock of the corporation. No subscription shall be received unless at the time of making it, the person so subscribing shall pay to the commissioners ten per cent of the par value of the stock subscribed for in cash.

When one-third of the capital stock has been subscribed the commissioners shall call a meeting of the subscribers to adopt by-laws for the corporation and elect directors thereof. Notice of

such meeting shall be given to every subscriber by depositing in the post-office properly addressed to him at his last known place of residence and postage prepaid, at least five days before the time fixed, a written or printed notice stating the time, place and object of the meeting.

Source.—Former § 171; originally revised from L. 1885, chap. 538, § 5; L. 1886, chap. 611, § 6.

See § 23, General Corporation Law, chap. 563 of 1890. Qualifications of voters.

See § 53, Stock Corporation Law, chap. 61 of 1909. Subscriptions to capital stock.

See § 660, Penal Law. Frauds in the organization of corporations.

See § 662 et seq. Fraudulent issue of stock.

CAPITAL.—A proposed mortgage insurance company, licensed by the superintendent of insurance to open stock subscription books, cannot organize on a smaller capital than that specified in the license. In re New York Mortgage Insurance Co., Attorney-General Rep., 1893, page 84.

§ 172. By-laws.

The by-laws of every corporation created under the provisions of this article shall be deemed and taken to be its law, and shall provide:

1. The number of its directors.
2. Their terms of office, so arranged that at least one-fourth in number of all the directors shall be elected annually.
3. The manner of filling vacancies among directors and officers.
4. The time and place of the annual meeting.
5. The manner of calling and holding special meetings of stockholders.
6. The number of stockholders who shall attend either in person or by proxy at every meeting to constitute a quorum.
7. The officers of the corporation and manner of their election by the directors, and their powers and duties. Such officers shall always include a president, secretary, treasurer, and a general manager. The president must be elected from among the directors.
8. The manner of electing or appointing inspectors of election.
9. The manner of amending or repealing the by-laws.

Source.—Former § 172, as amended by L. 1903, chap. 135; originally revised from L. 1885, chap. 538, § 6.

Amended by L. 1913, chap. 49.

Note.—The purpose of the amendment of this section by chapter 49 of 1913 was to require title. credit and securities guaranty corporations to elect their directors in such a manner that at least one-fourth of all such directors shall be elected annually.—Ed.

See § 175, post. Directors, number, quorum, etc.

See § 11, subd. 5, General Corporation Law, chap. 563 of 1890. By-laws to control action of directors.

§ 173. Certificate of superintendent.

Within ten days after such meeting the commissioners shall file in the office of the superintendent of insurance a verified record of the proceedings thereof, containing a copy of the subscription list, a copy of the by-laws adopted, and the names of the directors chosen. Thereupon the superintendent shall issue to such directors the certificate required by this chapter, which shall include a copy of the original certificate provided in section 170, the date and place of the subscribers' meeting the names of the directors elected and a statement that all the provisions of this article have been fully observed in the organization of the corporation.

Upon every amendment of the by-laws of such corporation, a copy of the amended by-laws, duly certified under the seal of the corporation, shall be filed in the office of the superintendent of insurance and of such county clerk, and shall not take effect until so filed. Unless such corporation shall be fully organized as provided in this section within one year after the issuing of the license to the commissioners to open books, such license shall be deemed to be revoked and all proceedings thereunder shall be void.

Source.—Former § 173; originally revised from L. 1885, chap. 538, §§ 7, 8.

§ 174. Certificate of payment of capital stock.

The capital stock of every corporation organized under this article shall be paid in, one-third thereof within one year and the other two-thirds thereof within two years from its incorporation, or such corporation shall be dissolved. The directors of every such corporation, within thirty days after the payment of the last installment of the capital stock, shall make a certificate stating the amount of the capital so paid in, which shall be signed and sworn to by the president and a majority of the directors, and shall be recorded in the office of the superintendent of insurance

and of the clerk of the county in which the principal office of the corporation is situated.

Source.—Former § 174; originally revised from L. 1885, chap. 538, § 24.

CAPITAL.—The capital stock of foreign credit guarantee companies must be paid in in cash, one-third thereof within one year, and the other two-thirds thereof within two years from their incorporation. Attorney-General Rep., 1893, page 164.

§ 175. Directors.

Every director of any such corporation shall be a stockholder to the extent of at least five shares of stock. The corporation shall have such offices as shall be prescribed in its by-laws. There shall not be less than five nor more than twenty directors, and the number originally fixed by the by-laws of the corporation may be changed at a special meeting of the owners of a majority of the whole amount of the capital stock of the corporation, called pursuant to notice specifying the purpose of the meeting, which shall be served in the manner prescribed in section one hundred and seventy-one. The vote of a majority of the stockholders in person or by attorney duly authorized for that purpose shall be necessary to such change. A majority of the whole number of directors shall be necessary to constitute a quorum. The secretary shall record all the votes of the corporation and the minutes of its transactions and of the board of directors, in a book to be kept for that purpose. The treasurer shall give bonds in such sum and with such sureties as are required by the by-laws for the faithful discharge of his duties.

Source.—Former § 175, as amended by L. 1903, chap. 135; originally revised from L. 1885, chap. 538, § 3; L. 1886, chap. 611, § 9, as amended by L. 1891, chap. 80.

See § 34, General Corporation Law, chap. 28 of 1909. Quorum of directors and powers of majority.

See §§ 25-31, Stock Corporation Law, chap. 61 of 1909. Directors and officers, their election and powers.

§ 176. Investment of capital and funds of a title guaranty corporation.

The capital and funds accumulated in the course of its business of every such title guaranty corporation shall be invested in the same kind of securities as the capital and stock of insurance corporations are required by this chapter to be invested. Every such corporation shall set apart a sum not less than two-thirds of the

amount of its capital stock as a guaranty fund, and shall invest the same in the kinds of securities in which it is permitted to invest its capital.

No such corporation shall issue any guaranty or policy of insurance upon bonds and mortgages or to owners of real property and others interested therein against loss by reason of defective titles and other incumbrances, until such sum has been so set apart and invested.

Such fund shall be kept and applied for the security and payment of losses and expenses which may be incurred by reason of the guaranty or insurance made as aforesaid, and shall not be subject to other liabilities of the corporation to the extent of and so long as any such guaranty or insurance is outstanding. If an increase of its capital stock is made by any such corporation, two-thirds of such increase shall be set apart and added to the guaranty fund thereof and kept and invested as above provided. When, on account of losses or otherwise, the amount of the guaranty fund of any such corporation shall fall below such sum as was required to be set apart and invested by this section, no further guaranty or insurance shall be issued until the deficiency below the amount so required has been supplied. Every corporation organized under the provisions of subdivision one of section one hundred and seventy of this chapter shall make and file with the superintendent of insurance on or before the thirty-first day of January of each year, a report in writing, setting forth the aggregate amount of the bonds and mortgages outstanding on the thirty-first day of the preceding December the payment of the principal and interest of which has been guaranteed by such corporation.

Source.—Former § 176, as amended by L. 1904, chap. 543; originally revised from L. 1886, chap. 611, § 11.

See § 16, ante. Investment of capital and surplus.

CAPITAL.—A sum of money used in acquiring a plant, consisting of abstract of title, documents, copies from records and other property necessary to the transaction of the business of the title guaranty company is in accordance with the provisions of the Insurance Law. *Matter of Long Island Title Guaranty Company*, Attorney-General Rep., 1897, page 210; February 14, 1896.

The requirement in relation to setting aside a part of the capital stock as a guarantee fund will not be satisfied if, pending final payment of its entire authorized capital, the corporation sets apart two-thirds of its actual paid-up capital as a guarantee fund; such corporation must set apart a sum not less than two-thirds of its capital stock. *Attorney-General Rep.*, April 29, 1893.

§ 177. Conditions requisite to commencing business of a credit guaranty corporation.

No credit guaranty corporation shall commence business before twenty-five per centum of its capital shall be paid in, nor until it shall have deposited with the superintendent of insurance the sum of one hundred thousand dollars as security for its policy holders.

Source.—Former § 177; originally revised from L. 1886, chap. 611, § 11.

See § 13. Deposit of securities with superintendent before commencing business.

DEPOSIT.—A foreign credit guaranty company, in order to do business in this state, must keep on deposit with a fiscal officer of the state in which it is incorporated the same amount of securities as a like domestic corporation is required to deposit with the superintendent of this state. Attorney-General Rep., 1893, page 75.

A deposit made pursuant to section 177 is for the protection only of policy-holders as defined, and not for other creditors of the depositing corporation. Attorney-General Rep., Dec. 6, 1894.

§ 178. Powers of credit guaranty corporations.

Any such credit guaranty corporation shall have the right, power and authority to guaranty from loss, and to agree to pay to merchants, manufacturers, dealers and persons engaged in business and giving credit, the debts owing to them, and to indemnify them from loss, and to charge or receive therefor such a sum or percentum as the consideration for such agreement, guaranty and indemnity as shall be agreed upon between such corporation and the persons guaranteed, and to buy, hold, own and take an assignment of any and all claims, accounts and demands so guaranteed, and to hold, own and collect the same, and to enforce the collection thereof by action the same as the original holder and owner thereof might or could do; also to insure the payment of money for personal services under contract of hiring. No corporation transacting credit guaranty business in this state shall advertise any assets or capitalization which are not held at the sole and exclusive risk of such business. Any such corporation may use its capital stock or its funds accumulated in the course of its business to purchase or pay for any claim or demand, the payment of which it has guaranteed or does guarantee; and such of its capital stock or funds as may not be so used shall be invested in the securities in which the capital and funds of insurance corporations are required by the provisions of this chapter to be invested. When an examination is

made by the authority of the superintendent of insurance into the affairs of any credit guaranty corporation doing business in this state, or when such corporation renders a statement to the insurance department, there shall not be allowed as assets any investments which are not held as prescribed by law at the date of such examination or rendering such statement; but unpaid premiums on policies written within three months shall be admitted as available resources. In estimating its liabilities, there shall be charged, in addition to the capital stock and all outstanding claims, a sum equal to the total unearned premiums on the policies in force, calculated on the gross sum without any deduction on any account, charged to the policy holders on each respective risk from the date of the issue of the policy.

Source.—Former § 178, as amended by L. 1897, chap. 387, and L. 1898, chap. 140; originally revised from L. 1886, chap. 611, §§ 4, 7.

See § 70, subd. 4, ante. Corporations may be incorporated under this section to guarantee fidelity of persons, etc.

CAPITAL.—The Insurance Law does not authorize the issuing of stock as “paid up” where such stock is exchanged for copyrights, plans, forms, blanks and statistical tables upon which the company operates and conducts its business. In re National Credit Company, Attorney-General Rep., 1893, page 164.

§ 179. Merger.

Any two or more corporations organized under subdivision one of section one hundred and seventy of this chapter, or organized under the laws of this state for the purposes or either of them mentioned in subdivision one of section one hundred and seventy of this chapter; or any one or more corporations organized under subdivision one of section one hundred and seventy of this chapter, or organized under the laws of this state for the purposes or either of them mentioned in subdivision one of section one hundred and seventy of this chapter, and any one or more corporations organized under article five of the banking law or under the laws of this state for the purposes or either of them mentioned in article five of the banking law; or any one or more corporations organized under subdivision one of section one hundred and seventy of this chapter, or organized under the laws of this state for the purposes or either of them mentioned in subdivision one of section one hundred and seventy

of this chapter, and any one or more corporations organized under article seven of the banking law or under the laws of this state for the purposes or either of them mentioned in article seven of the banking law, are hereby authorized to merge one or more of said corporations into another in the manner following: The respective boards of directors of such corporations may enter into and make an agreement under their respective corporate seals for the merger of one or more of said corporations into another of them, prescribing the terms and conditions thereof and the mode of carrying the same into effect, and may provide that such corporations upon and after such merger shall have the name of any one of the corporations merged or any other lawful name to be specified in said agreement, and may name the persons, not less than thirteen nor more than twenty-four, who shall constitute the board of directors of such corporation after its merger, or may provide for a meeting of stockholders within sixty days after the merger to elect a board of directors with such temporary provision for conducting the affairs of the corporation meanwhile as shall be agreed upon; and said directors so named or elected, after qualifying, may divide themselves into classes in manner and with effect as provided in section one hundred and ninety-five of the banking law, and may adopt new by-laws for said corporation. The agreement shall be subject to the approval of the superintendent of insurance, and if either of the parties to the agreement is a corporation organized under article five or under article seven of the banking law, or under the laws of this state, for the purposes or either of them mentioned in article five or in article seven of the banking law, the agreement shall also be subject to the approval of the superintendent of banks. Such agreement shall be submitted to the stockholders of each of such corporations at a meeting thereof to be called upon notice of at least two weeks, specifying the time, place and object thereof, addressed to each stockholder at his last known post-office address and deposited in the post-office, postage prepaid, and published for at least two successive weeks in one of the newspapers in each of the counties of this state in which either of such corporation shall have its principal place of business, and if such agreement shall be approved at each of such meetings of the respective stockholders separately,

by the vote or ballot of the stockholders owning at least two-thirds of the stock, the same shall be the agreement of such corporations. A sworn copy of the proceedings of such meetings, made by the secretaries thereof, respectively, shall be presumptive evidence of the holding and action of such meetings. Such agreement and certified copy of proceedings of such meetings shall be made in duplicate and filed in the office of the superintendent of insurance, and in the office of the clerk of the county in which the principal place of business of the corporation into which such corporation or corporations shall be merged is located; and if one of the parties to such agreement be a corporation organized under article five or under article seven of the banking law or under the laws of this state for the purposes or either of them mentioned in article five or in article seven of the banking law, a third copy thereof shall be filed in the office of the superintendent of banks; and the corporation into which the other, or others, are merged, shall thereafter have the new name, if any, specified in the aforesaid agreement, and the provisions of such agreement shall be carried into effect as therein provided; and it shall be lawful for said corporation into which the others shall have been merged, to require the return of the original certificate of stock held by each stockholder in each or either of the corporations, and in lieu thereof, to issue new certificates for such number of shares of its own stock as under the agreement of merger the said stockholder may be entitled to receive. If any stockholder not voting in favor of such agreement of merger shall, at such meeting or within twenty days thereafter, object to such merger and demand payment for his stock, he may, at any time, within sixty days after such merger, apply to the supreme court at any special term thereof, held in the district in which the county is situated, in which such corporation into which the others may be merged may have its principal place of business, upon at least eight days' notice to said corporation, for the appointment of three persons to appraise the value of his stock, and the court shall appoint such appraisers and designate the time and place of their first meeting, with such directions in regard to their proceedings as shall be deemed proper. The court may fill any vacancies in the board of appraisers occurring by refusal or neglect to hold such office. The appraisers shall

meet at the time and place designated and after being duly sworn, shall honestly and faithfully discharge their duties and estimate and certify the value of such stock, and deliver one copy to such corporation and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the appraised value of such stock, as directed by the court, said stock shall be cancelled and such stockholder shall cease to be a member of said corporation or to have any interest in such stock and in the corporate property, and such stock may be held and disposed of by the corporation for its own benefit. Upon the merger of any corporation in the manner herein provided, all and singular the rights, franchises and interests of the said corporation so merged in and to every species of property, real, personal and mixed, and things in action thereunto belonging, shall be deemed and transferred to and vested in such corporation into which it has been merged, without any other deed or transfer; and the said last named corporation shall hold and enjoy the same and all rights of property, franchises and interests in the same manner and to the same extent as if the said corporation so merged had retained the title and continued to transact the business of such corporation; and the corporation into which merger has been made shall acquire, possess and retain all rights and privileges belonging to either of said corporations at the time of such merger provided that if one of the parties to such agreement be a corporation organized under article seven of the banking law, or under the laws of this state for the purposes or either of them mentioned in article seven of the banking law, the corporation into which merger has been made shall acquire, possess and retain only such rights and privileges to do business belonging to either of said corporations at the time of such merger as may at that time be possessed by the corporation into which they are merged, and shall be subject only to the supervision of that department of the state government which theretofore had supervision over the corporation into which they are merged. The corporation into which the others shall be merged may increase its capital stock on compliance with the provisions of law in that regard to a sum not ex

ceeding the limit permitted at the time of such merger to either of the corporations so merged; and the title and real estate acquired by such corporation so merged shall not be deemed to revert by means of such merger or anything relating thereto. The rights of creditors of any corporation that shall be so merged shall not in any manner be impaired by any such merger, nor shall any liability or obligation for the payment of any money due or to become due, or any claim, guaranty or demand, in any manner or for any cause existing against such corporation, or against any stockholder thereof, be in any manner released or impaired, and all the rights, obligations and relations of all the parties, creditors, depositors, trustees and beneficiaries of trusts, shall remain unimpaired by the merger; but such corporation into which the others shall be merged shall succeed to such relations, obligations, trusts and liabilities and be held liable to pay and discharge all such debts and liabilities and perform all such trusts of the merged corporation in the same manner as if such corporation into which the other shall become merged had itself incurred the obligation or liability or assumed the relation or trust, and the stockholders of the respective corporations so entering into such agreement, shall continue subject to all the liabilities, claims and demands existing against them as such at or before such merger, and no suit, action or other proceeding then pending before any court or tribunal in which any corporation that may be merged is a party, shall be deemed to have abated or discontinued by reason of any merger, but the same may be prosecuted to final judgment in the same manner as if the said corporation had not entered into the said agreement, or the said last named corporation may be substituted in the place of any corporation so merged as aforesaid by order of the court in which such action, suit or proceeding may be pending.

Source.—Former § 179, as added by L. 1901, chap. 657.

Amended by L. 1916, chap. 345. In effect April 27, 1916.

Under this section, a merged corporation retains all the rights and privileges belonging to the constituent company, and the restrictions of section 16 as to investments and loans do not apply. Attorney-General Rep., July 5, 1907.

§ 180. Additional powers of certain title guaranty companies.

Each title guaranty corporation organized under the general statutes of this state, and having its principal place of business within a county containing upwards of one hundred thousand and less than two hundred and fifty thousand inhabitants, as appears by the last state enumeration of its inhabitants, may, within the judicial department where it shall have its principal place of business, possess and exercise, in addition to the powers conferred upon it by this chapter, the power to act as agent for any individual in the care and management of real or personal property; the power to guarantee the fidelity of persons holding places of public or private trust; the power to guarantee the performance of contracts other than insurance policies, and the power to execute or guarantee bonds and undertakings required or permitted in all actions or proceedings or by law allowed.

Source.—L. 1896, chap. 38, § 1.

A guaranty company not within a county containing upwards of one hundred thousand and less than two hundred and fifty thousand inhabitants, has no power to guarantee that a building shall be completed within a certain time and according to certain plans. Attorney-General Rep., Feb. 28, 1912.

§ 181. May execute bonds and undertakings.

Whenever a bond, undertaking, recognizance, guaranty or other obligation is required, permitted, authorized or allowed; or whenever the performance of any act, duty or obligation, or the refraining from any act, is required, permitted, authorized or allowed to be secured or guaranteed, such bond, undertaking, recognizance or other obligation; or such security or guaranty, may be executed by a corporation authorized by the laws of this state and by its charter to execute such instrument; and such corporations are authorized and empowered to execute all such instruments; and the execution by any such corporation of such bond, undertaking, recognizance, guaranty or other obligation by an officer, attorney in fact or other authorized representative shall be sufficient and be accepted as and be a full compliance

with every law or other requirement now in force or that may hereafter be enacted or made that such bond, undertaking, recognition, guaranty or like obligation be required or permitted or be executed by a surety or sureties, or that such surety or sureties be residents, householders or freeholders, or possess any other qualifications.

Source.—L. 1893, chap. 720, § 1, as amended by L. 1895, chap. 178, § 1.

Amended by L. 1913, chap. 182. In effect July 1, 1913.

Note.—The purpose of the amendment of sections 181, 182 and 183 by chapter 182 of 1913 was to correct an obvious defect in the former law, to simplify procedure and work for economy by providing that the court in passing upon the sufficiency of a surety bond or undertaking shall accept the certificate of the superintendent as to the solvency of the surety.—Ed.

§ 182. Issuance of certificate of solvency by superintendent of insurance.

The superintendent of insurance shall on application issue to any such corporation his certificate that it is qualified to become and be accepted, subject to the limitations specified in section twenty-four of this chapter, as surety or guarantor on all bonds, undertakings, other obligations or guaranties specified in section one hundred and eighty-one of this chapter or under any other law or requirement which certificate or a copy thereof certified to be such by the superintendent, shall be conclusive evidence of the solvency of such corporation and of its sufficiency as such surety or guarantor, and of the propriety of accepting and approving it as such, and be in lieu of any justification required of such corporation by any law or requirement. The superintendent may at any time after the issuance of a certificate of solvency, upon notice to and hearing of such corporation, revoke such certificate by filing a revocation thereof in his office and serving a copy on the corporation to which such certificate was issued. The superintendent may publish notice of such revocation in such newspapers as he deems proper.

Source.—L. 1893, chap. 720, § 2.

Amended by L. 1913, chap. 182. In effect July 1, 1913.

Note.—The purpose of the amendment of sections 181, 182 and 183 by chapter 182 of 1913 was to correct an obvious defect in the former law, to simplify

procedure and work for economy by providing that the court in passing upon the sufficiency of a surety bond or undertaking shall accept the certificate of the superintendent as to the solvency of the surety.—Ed.

§ 183. Supreme court may require statement to be filed.

If a certificate of solvency shall not have been issued by the superintendent of insurance to any such corporation, or if such certificate shall have been revoked, the supreme court in the judicial department which includes the county in which the principal place of business in this state of any such corporation shall be located, may, at any time, and as frequently as said court shall deem requisite, require such corporation to file with the clerk of said county a sworn statement of its condition, and may also require such corporation, through one or more of its officers, to submit to an examination as to its solvency. Such statement and examination, when filed with said clerk, or a certified copy thereof filed with the clerk of any other county, may be received and considered as justification upon any and all bonds, undertakings or other instruments executed or guaranteed by such corporations, which shall thereafter be presented for approval.

Source.—L. 1893, chap. 720, § 4, as amended by L. 1895, chap. 178, § 2. Former § 183, of L. 1893, chap. 720, § 3, repealed by L. 1913, chap. 182.

Amended by L. 1913, chap. 182 and number changed from 184 to 183. In effect July 1, 1913.

Note.—The purpose of the amendment of sections 181, 182 and 183 by chapter 182 of 1913 was to correct an obvious defect in the former law, to simplify procedure and work for economy by providing that the courts in passing upon the sufficiency of a surety bond or undertaking shall accept the certificate of the superintendent as to the solvency of the surety.—Ed.

RISKS.—A surety company is not exempt from section 24 of the Insurance Law, limiting the amount of any one risk; the section was not rendered inapplicable by chapter 720 of 1893, as amended by chapter 178 of 1895; the value of collaterals taken by the company are to be deducted from the amount. *Ind. and Gen. Trust Co. v. Tod*, 56 App. Div., 39.

ARTICLE 5-A.

MUTUAL EMPLOYERS' LIABILITY AND WORKMEN'S COMPENSATION
CORPORATIONS.

Section 185. Incorporation.

186. Completion of organization.

187. Directors and officers.

188. Meetings.

189. Assessments.

190. Dividends.

191. Reserves; suspension; cancellation and reinstatement of certificate.

192. Reports to and examinations by superintendent.

193. Prevention of accidents.

194. Authorization of foreign mutual insurance corporations.

§ 185. Incorporation.

Thirteen or more persons may become a corporation for the purpose of insuring on the mutual plan against loss or damage resulting from accident to or injury suffered by an employee or other person and for which the person insured is liable, or the liability of the employer to pay compensation to his employees, or the compensation of employees under any workmen's compensation law, or against loss or damage caused by a truck, wagon or other vehicle propelled by steam, gas, gasoline, electric, mechanical or other power or drawn by horses or mules, used in trade or manufacture and owned by any such person to the property of another for which loss or damage the person insured is liable, by making and filing in the office of the superintendent of insurance a certificate to be signed by each of them, stating their intention to form a corporation for the purpose named, and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation, the place where it is to be located, the mode and manner in which its corporate powers are to be exercised, the number of directors, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and post office addresses of the directors who will serve until the first annual meeting of such corporation, and such further particulars as may be necessary to explain and make manifest the objects and purposes of the corporation. Such certificate shall

be proved or acknowledged and recorded in a book kept for that purpose by the superintendent of insurance and a certified copy thereof shall be delivered to the persons executing the same.

Added by L. 1913, chap. 832. In effect December 23, 1913.

§ 186. Completion of organization.

Upon receipt of a certified copy of the certificate of incorporation from the superintendent of insurance, the persons signing such certificate may open books to receive applications for membership therein. No such corporation shall transact any business of insurance unless the annual premium cost on the insurance applied for shall be not less than twenty-five thousand dollars at the minimum annual rates approved by the superintendent of insurance and until at least forty employers employing not less than twenty-five hundred employees; or thirty employers employing not less than five thousand employees; or twenty employers employing not less than seven thousand five hundred employees; or ten employers employing not less than ten thousand employees, have become members of such corporation and applied for and agreed to take insurance therein, covering the liability of such employers to their employees for accidents to or injuries suffered by such employee nor until the facts specified in this section have been certified under oath by at least three of the persons signing the original certificate, to the superintendent of insurance, and the superintendent of insurance has issued a license to such corporation authorizing such corporation to begin writing the insurance specified in this article. The superintendent of insurance must be satisfied that the membership list of the corporation is genuine, and that every member thereof will take the policies as agreed by him within thirty days of the granting of the license to the corporation by the superintendent of insurance to issue policies. If at any time the number of members or the number of employees who are employed by the members of the corporation falls below the number required by this section, no further policies shall be issued by the corporation until other employers have made bona fide applications for insurance therein, who, together with the existing members, amount to not less than forty employers who employ not less than twenty-five hundred employees, or thirty employers who employ not less than five thousand

employees, or twenty employers who employ not less than seven thousand five hundred employees, or ten employers who employ not less than ten thousand employees, and in the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings against such corporation under section sixty-three of this chapter to the same effect as if clause h of subdivision one of such section was specifically applicable to corporations organized under this article.

The members of the corporation shall be policyholders therein, and when any member ceases to be a policyholder he shall cease, at the same time, to be a member of the corporation. A corporation, partnership, association or joint-stock company may become a member of such insurance corporation and may authorize another person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member. Any person acting as employer in the capacity of a trustee may insure in such corporation and as such trustee may assume the liabilities and be entitled to the rights of a member, but shall not be personally liable upon such contract of insurance.

Such corporation may borrow money or assume liability in a sum sufficient to defray the reasonable expenses of its organization.

Added by L. 1913, chap. 832. In effect December 23, 1913.

Amended by L. 1915, chap. 506. In effect May 3, 1915.

§ 187. Directors and officers.

Any such corporation shall have not less than thirteen directors, and such officers as shall be provided in the certificate of incorporation or by the by-laws made by the members. The directors shall be elected annually by the votes of the members. All except two of the directors of the corporation elected after the organization of the corporation is completed and it is authorized to begin to issue insurance policies shall be members of the corporation. All the officers except the secretary, assistant secretary and the actuary must be members of the board of directors.

Added by L. 1913, chap. 832. In effect December 23, 1913.

§ 188. Meetings; basis of right to vote.

At all meetings of the members of the corporation each member shall have one vote and one additional vote for every five hundred

employees or major fraction thereof, covered by the policy held by such member in the corporation, provided that no member shall have more than twenty votes. The number of votes of a member shall be determined by the average number of employees at work and covered by said member's policy in the corporation during the last six months from a date not more than ten days immediately prior to the date of any such meeting. Before any member shall be permitted to cast more than one vote at any meeting of members he shall file with the secretary an affidavit showing the average number of employees at work during the preceding six months covered by the employer's policy of insurance.

Added by L. 1913, chap. 832. In effect December 23, 1913.

Amended by L. 1915, chap. 506. In effect May 3, 1915.

§ 189. Assessments.

The corporation may in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to and in addition to the cash premium written in the policy. If the corporation is not possessed of cash funds above its unearned premium sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. All assessments shall be based upon present values of all future payments, and all proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the corporation and the contingent liability of the members thereof shall be available for the payment of any claim against the corporation.

Added by L. 1913, chap. 832. In effect December 23, 1913.

§ 190. Dividends.

The board of directors may, from time to time, fix and determine the amount to be paid as a dividend upon policies expiring during each year after retaining sufficient sums to pay all the compensation and other policy obligations which may be payable on account of the injuries sustained and expenses incurred. Such dividend shall not take effect or be distributed until approved by the superintendent of insurance after such investigation as he may deem necessary. Any such corporation may hold cash assets in excess of its liabilities, but such excess shall be limited to one hundred per centum of its reserves for losses and expenses incurred, and may be used from time to time in payment of losses, dividends and expenses.

Added by L. 1913, chap. 832. In effect December 23, 1913.

Amended by L. 1916, chap. 393. In effect May 2, 1916.

Note.—By the amendment of 1916, dividends of mutual companies must be approved by the superintendent.—Ed.

§ 191. Reserves; suspension; cancellation and reinstatement of certificate.

Such corporation shall be required to maintain the same reserves for the protection of policyholders and employees who may have a right of action directly against such corporation as are required to be maintained by stock insurance corporations in relation to the same class of insurance, except that reserves for liability for insurance of compensation under the workmen's compensation law shall be prescribed by the superintendent of insurance, and the superintendent of insurance may suspend or cancel the certificate issued by him authorizing said corporation to transact such insurance business at any time when in the judgment of the superintendent of insurance the reserves of said corporation are insufficient to insure and secure the payment of its policy obligations, and the superintendent of insurance may reinstate or renew said certificate whenever by assessment or otherwise said reserves have been increased to a sum sufficient in the judgment of the superintendent of insurance to insure and secure the payment of the policy obligations of such corporation.

Added by L. 1913, chap. 832. In effect December 23, 1913.

Amended by L. 1915, chap. 506. In effect May 3, 1915.

§ 192. Reports to and examinations by superintendent of insurance.

Every such corporation shall make reports to the superintendent of insurance at the same times and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

Added by L. 1913, chap. 832. In effect December 23, 1913.

§ 193. Prevention of accidents.

The board of directors shall make and enforce reasonable rules and regulations not in conflict with the laws of the state for the prevention of accidents to the employees on the premises of members, and for this purpose the inspectors of the corporation shall have free access to all such premises during regular working hours. The policy of any member neglecting to provide suitable safety appliances as provided by law or as required by the board of directors may be canceled and terminated by the board of directors after giving to such member notice of cancellation ten days prior to its becoming effective.

Added by L. 1913, chap. 832. In effect December 23, 1913.

§ 194. Authorization of foreign mutual insurance corporations.

After January first, nineteen hundred and seventeen, the superintendent of insurance may, in his discretion, issue a certificate of authority to a mutual corporation organized under the laws of another state to do such insurance in this state; provided that, in no event, shall authority be given to any such mutual corporation to do other kinds of business than those specified in this article. Such corporation shall be required to maintain the same reserves for the protection of members and employees as are required for domestic corporations authorized to transact the same kinds of insurance, and shall at all times have and maintain a surplus over

and above all liabilities, including unearned premiums and loss reserves, of not less than one hundred thousand dollars. If any such corporation shall not at all times have and maintain the surplus and reserves hereby required, the superintendent of insurance may, at any time, in his discretion, revoke its certificate of authority to do business in this state.

Added by L. 1913, chap. 832. In effect December 23, 1913.

Amended by L. 1916, chap. 393. In effect May 2, 1916.

Note.—The amendment of 1916 requires companies of this character of other states to have and maintain a surplus of at least \$100,000.—Ed.

ARTICLE VI.

LIFE OR CASUALTY INSURANCE CORPORATIONS UPON THE CO-OPERATIVE OR ASSESSMENT PLAN.

SECTION 200. Incorporation.

201. What corporations to be subject to this article.
202. Annual report.
203. Designation of principal office, and of persons upon whom process may be served.
204. Foreign corporations.
- 204-a. Reciprocal certificate.
205. Reserve or emergency fund.
206. Reincorporation of existing societies
207. Visitation by superintendent; proceedings to restrain corporation from doing business.
208. Hearing thereon.
209. Corporations subject to this article; annual meetings; examinations; transfers of risk; reinsurance.
210. Payment of maximum amount of policy; agreements for benefits; notice of assessment.
211. Change of beneficiary.
212. Exemption from execution.
213. Penalties.
214. Exemption of certain societies and of subordinate lodges, of Odd Fellows and Masons, from the provisions of this article.
215. Corporations may deposit securities with the superintendent of insurance.
216. Quorum.
217. Reincorporation
218. Admission of minors.
219. Policy to indicate assessment plan.
220. Forms of policies or certificates must be filed and approved.

SECTION 200. Incorporation.

Nine or more persons may become a corporation for the purpose of transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, fraternal or non-fraternal, by filing in the office of the superintendent of insurance a declaration signed by each of them and duly acknowledged, setting forth their intention to form a corporation for the transaction of life or casualty insurance, or both, upon the co-operative or assessment plan, the name of the proposed corporation, the place where its principal office shall be located within the state, the mode in which its corporate powers are to be exercised and of electing directors or other persons, by whatsoever name or title designated.

who are to have and exercise the general control and management of its affairs and of its funds, which election shall be in such manner as shall be prescribed by its by-laws, or in case of fraternal societies, by representatives chosen by subordinate lodges, councils or bodies, who shall be members of such societies and a majority of them citizens of this state. Such declaration shall have endorsed thereon or annexed thereto and as a part thereof, the sworn statement of three of such persons that at least two hundred persons eligible under the proposed laws of the corporation to membership therein have in good faith made applications in writing for membership.

If all the requirements of this chapter have been complied with, the superintendent shall file such declaration and record it with the certificate of the attorney-general, in a book to be kept for that purpose, and deliver to the corporation a certified copy of the papers so filed and recorded, with his license in writing to the corporation to engage in the business proposed in the declaration, which certified copy and license shall be filed in the office of the clerk of the county where the office of the corporation is to be located. Such corporation shall not commence the business of insurance until at least two hundred persons have subscribed in writing to be insured therein in the aggregate amount of at least four hundred thousand dollars, and have each paid in two per centum on the amount of the insurance severally subscribed for in cash, and the same is deposited in bank to the credit of the mortuary fund to be held in trust for the benefit of the beneficiaries, and the superintendent of insurance shall have further certified that it has complied with the provisions of this chapter, and is authorized to transact business.

Provided, however, that no such corporation other than a fraternal corporation shall be formed nor any such license or certificate be granted or issued by the superintendent of insurance after June first, nineteen hundred and six.

Source.—Former § 200, as amended by L. 1906, chap. 326; originally revised from L. 1883, chap. 175, §§ 1, 2, and § 3, as amended by L. 1887, chap. 285.

See § 6. Fees to superintendent for filing declaration.

See § 9. Certificate of authorization of superintendent.

See § 10, ante. Certificate of attorney-general; corporate names; number of directors.

See § 60, General Corporation Law. Proceedings to change name of corporation.

See § 1197, Penal Law. Failure of officer to designate persons upon whom process may be made, a misdemeanor.

INFANTS.—A corporation organized under this section has no power to receive, as members, infants of such tender years that they are unable to exercise any choice in becoming members, or to exercise the powers with which members are invested under the act. *Matter of G. M. B. Assn.*, 135 N. Y., 280.

Co-operative insurance companies cannot insure the lives of infants. *Attorney-General Rep.*, 1892, page 366.

CONTRACT.—The contract between a member of a corporation organized under this section and the corporation is contained in its constitution and by-laws, and they should be considered together, the corporation has the right to change the amount allowed to sick members, even after a member has become sick. *Poultney v. Bachman*, 31 Hun, 52.

Companies organized as co-operative insurance companies have no authority to contract with merchants, newspapers or periodicals for the delivery of coupons to purchasers entitling the holder, under certain conditions, to an indemnity insurance. *Attorney-General Rep.*, 1893, page 200.

A quorum of directors must be a majority of all the directors, unless otherwise provided in charter or special law. By-laws cannot change this rule. *Attorney-General Rep.*, 1900, page 253.

By-laws are not a part of the policies issued unless expressly referred to and incorporated therein. *Kingsley v. N. E. Mut. Life Ins. Co.*, 8 Cushing, 393.

An insurance company and a savings and loan company cannot issue a joint certificate to a proposed policyholder. *Attorney-General Rep.*, 1893, page 259.

Discrimination between members of a co-operative insurance company is not permissible. *Attorney-General Rep.*, 1892, page 303.

§ 201. What corporations to be subject to this article.

Any corporation, association or society which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with its members, whereby, upon the decease of a member any money or other benefit, charity, relief or aid it to be paid, provided or rendered by such corporation, association or society to his legal representatives, or to the beneficiary designated by him, which money, benefit, charity, relief or aid is derived from voluntary donations or from admission fees, dues or assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, or interest, or accretions thereon, or accumulations thereof, or rebates from amounts payable to beneficiaries or heirs; and wherein the money or other benefit, charity, relief or aid, so realized, is applied to or accumulated for the uses and purposes herein specified, or of such corporation, association or

society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of life insurance upon the co-operative or assessment plan, and shall be subject to the provisions of this article.

Any such corporation, association or society, which issues any certificate, policy or other evidence of interest to, or makes any promise or agreement with, its members, whereby, upon the sickness or other physical disability of a member, and not by reason of having attained a certain age, any money or other benefit, charity, relief or aid is to be paid, provided or rendered by such corporation, association or society to such member or beneficiary designated by him, which money, benefit, charity, relief or aid is derived from voluntary donations or assessments or admission fees, dues or assessments, or any of them, collected or to be collected from the members thereof, or members of a class therein, and interest and accretions thereon; and wherein the money or other benefit, charity, relief or aid is applied to or accumulated for the uses and purposes herein specified or of such corporation, association or society, and the expenses of the management and prosecution of its business, shall be deemed to be engaged in the business of casualty insurance upon the co-operative or assessment plan and shall be subject to the provisions of this article. Notwithstanding anything to the contrary contained in the charter or certificate of incorporation of any corporation, association or society subject to the provisions of this section, such corporation, association or society may, by its by-laws, determine and designate the class or classes of persons who may be named and designated by a member as beneficiary in any certificate of membership to be issued to him and to whom the moneys payable under such certificate upon the death of such member shall be payable. Any corporation, association or society subject to the provisions of this section, notwithstanding anything in its charter or certificate of incorporation to the contrary, may, by its by-laws in force at the time of the death of a member, designate and determine the class or classes of persons to whom, and in what order, shall be paid, any moneys payable under any certificate of membership issued by said corporation, association or society, upon the death of a member in good standing, in default of a designation made by such member and in force at

the time of his death. A member of such corporation, association or society may designate or name as his beneficiary or beneficiaries any one or more of the persons within such designated class. Nothing herein contained shall be construed to limit the right of such member to change the designation of any beneficiary named by him as at present provided by law.

Source.—Former § 201, as amended by L. 1907, chap. 273; originally revised from L. 1883, chap. 175, §§ 5, 6.

BURIALS.—Corporations issuing contracts to furnish burials for contract holders upon payment of stipulated sum at execution of contract, and a like sum upon death of the contract holder, are "transacting the business of insurance." In re Barrett Company, Attorney-General Rep., 1903, page 258.

By sections 201 and 209 co-operative life and casualty companies are made subject to the provisions of Article 6, herein. Opinion of Attorney-General, August 29, 1907.

Where a company was incorporated under the provisions of chap. 175 of 1883 for the transaction of life insurance only, it cannot transact the business of casualty or sick benefit insurance. Attorney-General Rep., Nov. 22, 1904.

§ 202. Annual report.

Every such corporation, association or society doing a life or casualty insurance business, or both, upon the co-operative or assessment plan, as herein defined, shall, on or before the first day of March in each year, make and file with the superintendent of insurance a report of its affairs and its operations during the year ending on the thirty-first day of December immediately preceding, which report shall be in lieu of all other reports required by this chapter. Such reports shall be verified by such of the officers of the corporation, association or society as the superintendent may require and shall contain answers to the following questions:

1. Number of certificates or policies issued during the year or members admitted.
2. Amount of indemnity effected thereby.
3. Number of death losses.
4. Number of death losses paid.
5. The amount received from each assessment in each class for the year.
6. Total amount paid policy-holders, beneficiaries, legal representatives or heirs.

7. Number of death claims for which assessments have been made.

8. Number of death claims compromised or resisted, and brief statement of reason.

9. Does society charge annual dues?

10. How much on each one thousand dollars annually or per capita, as the case may be?

11. Total amount received and the disposition thereof.

12. Does society use moneys received for payment of death claims to pay expenses of society, in whole or in part, and if so, state the amount so used?

13. State total amount of salaries paid to officers.

14. Does society guarantee fixed amount to be paid, regardless of amount realized from assessments, dues, admission fees and donations?

15. If so, state amount guaranteed and the security of such guaranty.

16. Has the society a reserve fund?

17. If so, how is it created, and for what purpose, the amount thereof and how invested.

18. Has the society more than one class?

19. If so, how many, and the amount of indemnity in each

20. Number of members in each class.

21. If organized under the laws of this state, state under what law and at what time.

22. If organized under the laws of any other state, state such fact and the date of organization.

23. Number of policies of membership lapsed during the year.

24. Number in force at beginning and end of year in each class, if more than one class.

25. Aggregate maximum, minimum and average age of membership in each class in the society.

26. The assets applicable to life or casualty insurance other than reserve fund, and how invested.

27. Amount received from all sources for life or casualty insurance and the disposition thereof.

No deposit of securities with the superintendent shall be required from such corporation, association or society. Any corporation, association or society refusing or neglecting to make such report, or to make payment of any of the fees required by law, may, upon the suit of the superintendent, be enjoined by the supreme court from carrying on any business until such report and payment shall be made and until the costs of such action be paid.

Source.—Former § 202; originally revised from L. 1883, chap. 175, §§ 7, 8.

TAXATION.—Co-operative, life, and casualty insurance companies organized under chap. 175 of the Laws of 1885, are not deprived of the exemptions from taxation, etc., provided for by that act, by reincorporating under chap. 690 of Laws of 1892. Attorney-General Rep., 1892, page 425.

§ 203. Designation of principal office and of person upon whom process may be served.

Every such corporation doing business within this state, except such as have already made such designation, and every such corporation hereafter formed under this article, shall, before doing any business in this state, designate some place within the state as the principal office in this state of such corporation, and some person residing in the same city, village or town where such office is located as a person upon whom service of legal process and papers may be made as upon such corporation. Such designation shall be made by an instrument under the hand of the president and secretary or other duly authorized officers of the corporation, and shall be filed in the office of the superintendent of insurance. If the person so designated shall die or remove from such place another person shall be appointed in his place within thirty days; and such attorney or location of principal office may, at the option of the corporation, be changed at any time. Notice of such change or of a new designation of a person upon whom service may be made as herein provided, under the hand of such president and secretary or other officer, shall be filed with the superintendent within thirty days after such change or new designation is made. Upon failure to comply with any of the provisions of this section within thirty days after written notice by the superintendent of such default and requiring such compliance, the corporation shall cease to do business in the state until it has complied therewith.

Source.—Former § 203; originally revised from L. 1883, chap. 175, § 9.

PROCESS.—A certificate filed by an association in attempted compliance with section 16, General Corporation Law, which does not designate the place where the service can be made, and is not accompanied by the consent of the person designated, nor filed in the secretary of state's office, is fatally defective. *McClure v. Supreme Lodge*, 41 App. Div., 131.

§ 204. Foreign corporations.

No such corporation, association or society organized under the laws of any other state or territory of the United States or District of Columbia, or foreign countries, except such secret fraternal societies having subordinate lodges or councils as are now authorized to transact business within this state with the consent of the superintendent, shall transact business herein until its has received from the superintendent of insurance a certificate of authority to do business in this state, a duplicate of which shall be filed in his office. The superintendent shall annually issue to such foreign corporation, association or society renewal certificates of authority to continue its business, if its annual report is satisfactory to him, which certificate shall be filed in the office of the clerk of the county where its principal office is located within this state, within sixty days after filing such annual report, and no such foreign corporation, associations or society, except secret fraternal societies above specified, shall be authorized to continue such business after the expiration of such sixty days unless such certificate shall have been so received and filed. The superintendent shall refuse a certificate of authority or a renewal of the same to any such foreign corporation, association or society, except such secret fraternal societies, when, in his judgment, such refusal will best promote the public interests, or when by the laws of the state or territory under which the same is organized, the corporations, associations or societies of this state doing a life or casualty business upon the co-operative or assessment plan are not permitted to transact such business in such other state or territory. Provided, however, that except in the case of fraternal organizations, and except in the case of corporations complying with the conditions required of domestic corporations in procuring certificates for foreign states, as provided in section two hundred and four-a of this act, no certificate of authority to do business in this state except renewal

certificates of authority to such corporations, associations or societies as were on April twenty-sixth, nineteen hundred and six, authorized to transact business within the state, shall be issued by the superintendent of insurance after June first, nineteen hundred and six.

When any other state or territory shall impose any obligation upon such corporation, association or society of this state, or their agents transacting business in such other state or territory, the like obligations are hereby imposed upon similar corporations, associations or societies of such other state or territory and their agents or representatives transacting business in this state, and such corporation, association or society of such other state or territory, and their agents and representatives shall pay all licenses, fees or penalties to, and make deposits with, the state treasurer imposed by the laws of such other state or territory upon any such corporation, association or society of this state doing business therein; and in case of failure to pay the same, the superintendent shall refuse the certificate of authority herein provided for, or cancel such certificate in case one shall have previously been issued.

Source.—Former § 204, as amended by L. 1906, chap. 326; originally revised from L. 1883, chap. 175, § 10.

Amended by L. 1916, chap. 590. In effect May 18, 1916.

A company organized as a mutual life insurance company should not be allowed to do business in this state whose by-laws restrict the exercise of its corporate powers to its incorporators and such persons only as they may permit to share therein, to the exclusion of the membership generally. In such case it seems that the co-operation or mutual principle is eliminated, and is contrary to the Insurance Law. In re Boston Mutual Life Assn., Attorney-General Rep., 1897, page 133.

§ 204-a. Reciprocal certificate.

Whenever the laws or public officers of any foreign state or territory shall require as a condition of or as a prerequisite to the entry of any domestic corporation now doing business under article six of this chapter, into such foreign state or territory, or to the issuance to it of a license to do business therein, that such corporation shall file with any official or department of such foreign state or territory, a certificate in substance or to the effect that corporations of such foreign state or territory conducting a similar business therein, may, upon proper application to the superintendent of insurance of this state and upon complying with

the laws of this state in respect thereto, be permitted to enter and carry on business herein, subject to the laws of this state, the superintendent of insurance, upon the application of such domestic corporation shall issue to it one or more such certificates, provided, however, that it shall establish to the satisfaction of the superintendent of insurance that it has had an experience of at least forty years; that its membership is confined and limited to members of one fraternity; that its actual expenses of management shall be limited in any one year to twenty per centum of the cash income actually received by it from premiums, assessments and membership fees; that it is possessed of assets held for the benefit of policy or certificate holders only, either in cash or invested as required in the case of life insurance companies by the laws of this state, or both, at least equal to the aggregate amount of its accrued liabilities and contingent reserve liability, whereof there shall be deposited with the superintendent of insurance the sum of one hundred thousand dollars in the stocks or bonds of the United States or of this state not estimated above their current market value, or in the bonds of a county or incorporated city in this state authorized to be issued by the legislature, not estimated above their par value nor their current market value, or in bonds and mortgages on improved, unincumbered real property in this state, worth fifty per centum more than the amount loaned thereon. The accrued liabilities and contingent reserve liability to be determined as follows:

1. The amount of all reported death, or other benefit claims then remaining unpaid, including unpaid installments on claims payable in installments;
2. The amount of all accrued liabilities, including assessments or premiums paid in advance for any period beyond that covered by "three" hereunder;
3. An amount equal to the expected claims by the American experience table of mortality to the next succeeding date when a regular assessment or premium payment falls due, the nonpayment of which would cause the insurance under outstanding certificates or policies to cease and determine;
4. In event that the corporation has outstanding any certificates or policies under which any payment, other than a disability benefit, is promised either actually or contingently to be made to a living certificate or policy holder, or under which the term of

premium paid is, actually or contingently, less than the entire possible term of the insurance protection, an amount equal to the required reserve for all the benefits promised by such certificates or policies, computed on the net premium basis according to the American experience table of mortality with interest at four per centum per annum;

5. An amount equal to the single year term premium at attained age upon each and every outstanding certificate or policy, not covered by subdivision four, determined by the American experience table of mortality with interest at four per centum per annum, less a credit of the amount of the stipulated or stated net mortuary payment to be made, subject to the laws governing said corporation, during said year by or on account of each such certificate or policy, which credit shall, however, in no event exceed the said single year term premium charged against the individual certificate or policy on account of which such credit is taken;

6. Every such insurance corporation incorporated under the laws of any other state of the United States, and doing business in this state, shall keep on deposit with the superintendent of insurance of this state or with the auditor, comptroller or general fiscal officer of the state by whose laws it is incorporated the same amount and character of securities which are required for deposit in this state of a domestic corporation. The superintendent of insurance shall be furnished with the certificate of such auditor, comptroller or general fiscal officer, under his hand and official seal, that he, as such auditor, comptroller or general fiscal officer of such state, holds in trust and on deposit for the benefit of the policy or certificate holders of the corporation such stocks and securities. Such certificate shall embrace the items of the securities so held and shall state that the officer making it is satisfied that the securities are worth the amount required by law. Any foreign corporation permitted or seeking to do business in this state of the character herein described which invests its funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this article for the investment of funds.

Added by L. 1916, chap. 590. In effect May 18, 1916.

Note.—This section was added by L. 1916, chap. 590, and under its provisions the Superintendent of Insurance can issue to a domestic corporation applying for a license in a foreign state a reciprocal certificate to the effect that a like corporation will be permitted to do business here, which has had

forty years' experience, whose membership is limited to persons who are members of one fraternity and whose expense of management in any one year does not exceed twenty per centum of its "premium" income; also, the corporation must have a deposit in securities of one hundred thousand dollars and maintain certain reserves.—Ed.

§ 205. Reserve or emergency fund.

Every such corporation, association or society, except casualty associations or societies, shall accumulate and maintain at all times a reserve or emergency fund of an amount not less than the proceeds of one death or disability assessment, or periodical call on all policy or certificate holders thereof, and at least equal to the amount of its maximum certificate or policy, and also at least equal to the cost of insurance for all policies in accordance with the American experience table of mortality until the next call or assessment is due and payable over and above all liabilities, including existing death claims. Such fund shall be held for the benefit or protection of its members, their legal representatives or beneficiaries. If such fund is in excess of the reserve or emergency fund required by this section, the excess, or any portion thereof, may be used in reduction of assessments or premium calls upon policy or certificate holders; and if in excess of double such reserve or emergency fund and not less than the sum of one hundred thousand dollars, the pro rata excess on any policy or certificate terminated by death or surrender may be refunded to the holder or beneficiary provided that nothing contained in this article shall be construed to permit any contract promising any fixed cash payment to any living certificate or policy holder, and provided further that any reserve provided for by the articles of association, constitution or by-laws or by any contract with members shall not be used in violation thereof and shall be treated as a liability. Every such casualty association or society shall maintain a reserve or emergency fund of at least eight thousand dollars, if the **maximum** policy issued by such association or society be for five thousand dollars or more or a reserve or emergency fund of two dollars for each five thousand dollars of insurance in force, if the maximum policy issued by such association or society be for less than five thousand dollars, and thereafter five per cent of the amount realized on each periodical call shall be set apart and added

thereunto, unless the same be already accumulated, until such fund shall be equal to two dollars on each five thousand dollars of insurance in force. In case such reserve or emergency fund or any portion thereof shall have been used by any such corporation or society for the purpose for which the same was created or maintained, the amount so used shall be made up and restored to said fund within six months thereafter. Such fund may be held in cash, or invested in the same class of securities required for the investment of funds by domestic life insurance corporations.

No foreign corporation, association or society shall be authorized to transact any business authorized by this article within this state unless it furnishes evidence satisfactory to the superintendent of insurance that it has accumulated a fund equal in amount to that required by this section, and that such accumulation is permitted by the laws of the state or country where it is incorporated and that it is held for the benefit of policy or certificate holders only and invested as required by such laws. If any such corporation, association or society is authorized by the law under which it is incorporated to issue contracts of insurance not authorized by this article, it may be permitted to transact in this state the kind of business authorized by this article upon complying in all other respects with the requirements of this chapter and filing with the superintendent of insurance an agreement duly executed by its proper officers that such corporation, association or society will not enter into or issue within the state of New York any contract of insurance, policy or agreement not authorized by this article. Upon a breach of said agreement by any such corporation, association or society, the superintendent of insurance shall forthwith revoke and cancel its authority to transact business in this state.

The annual report to the superintendent of insurance required in section 202 of this article shall be in lieu of all other reports required by law.

Source.—Former § 205, as amended by L. 1906, chap. 326: new

ACCUMULATION OF RESERVE FUND.—This section, authorizing the creation of a reserve fund to be used for the payment of death losses, is not to be construed so as to permit such associations to accumulate a reserve fund wholly from the contributions of one class of members and then devote it to the payment of death losses of another class who in no way contributed to it. *People ex rel. Atty.-Gen. v. L. R. Assn.*, 150 N. Y., 94.

USE OF RESERVE FUND.—Where the reserve fund was to be invested and could not be used to pay death or indemnity claims of holders of certificates, except an increase thereof over \$100,000, which might be credited to the mortuary fund for the payment and adjustment of claims, such fund, although not distributable while under \$100,000 to the beneficiary of an insured in a department of the insurance business of the company, which, at the time of his death, was continued in its business, was yet available as regards the amount payable under a certificate issued to a member in a department of the business which had subsequently been discontinued, and from which some members had been transferred to another department, where such certificate holder, without notice of any change in the business, had continued thereafter to pay his monthly assessments and the company to receive them. *Bird v. Mutual Union Assn.*, 30 App. Div., 346.

The rights and liabilities of the parties to a death claim upon the funds of an insolvent mutual aid association in the hands of a receiver are measured by the contract created by the constitution, by-laws and certificate of membership, provided the same were authorized by law. *People v. Grand Lodge*, 156 N. Y., 533.

USE OF RESERVE FUND.—Where the constitution of the company permitted its board of trustees in their discretion to use securities forming the reserve fund "to meet any want or necessity of the association which may hereafter arise by reason of unforeseen emergencies," it was held that this only applied while the company was alive and in the hands of its board of trustees, and so had no effect upon the disposition of its funds after its dissolution. *Matter of E., R. & F. L. Assn.*, 131 N. Y., 354.

The reserve fund of an assessment life insurance company should be distributed by the receiver to the policyholders. *Farmers' Loan & Trust Co. v. Aberle*, 19 App. Div., 79.

The reserve fund of a mutual benefit society should not be used by the directors for the payment of its notes. *McClure v. Levy*, 147 N. Y., 215.

SPECIFIC PERFORMANCE.—An action for the specific performance of an insurance contract to divide a reserve fund cannot be maintained by a policyholder; the action lies against the officers and not the corporation. *Swan v. Mut. Res. Fund Life Assn.*, 20 App. Div., 255.

EXTRA ASSESSMENTS.—The provisions relating to extra assessments expressed in the certificate of insurance in terms should be free from ambiguity. *Matter of New York Casualty Company*, Attorney-General Rep., 1897, page 118.

Co-operative life and casualty insurance companies cannot issue policies with cash surrender value. The management of such companies cannot be confided to a portion of the membership to the exclusion of any other portion thereof. *Conn. Indem. Assn.*, Attorney-General Rep., 1893, page 114.

The certificate of an industrial benefit association must provide for assessments sufficient to meet the maximum amount in a single policy. Attorney-General Rep., May 5, 1893.

An industrial benefit association may not evade the law prohibiting the payment of fixed cash payments by providing in policies for the return of a "portion of the premiums actually paid in cash." Attorney-General Rep., Oct. 29, 1895.

Waiver of all rights to the provisions of §§ 205-210 is not in accordance with the provisions of article VI of the Insurance Law. In re Ind. Benefit Assn., Attorney-General Rep., 1892, page 427.

By the terms of a certificate for \$2,000, issued in 1884 by a relief association to one H. as a member of Class A, the beneficiary was entitled to have an assessment imposed upon members of that class and to receive the proceeds not to exceed \$2,000. Two years thereafter said class was consolidated with two others and under the by-laws, as amended, the beneficiary became entitled to have an assessment made upon all members of the association and to receive the proceeds not to exceed \$2,000. A further amendment to the by-laws in 1892, provided that no rates, terms or conditions should be changed upon policies in force November, 1892. In 1893 the by-laws, by amendment, provided that the amount to be paid to beneficiaries under policies in force September 30, 1892, should be ascertained in accordance with the by-laws of 1892. In an action to recover upon the certificate held, that the beneficiary was only entitled to receive the amount of an assessment upon all the members of the association at the death of H. at the rates provided by the by-laws of 1884 and not the sum of \$2,000. *Heath v. New York Safety Reserve Fund*, 69 Misc., 452.

RESERVE.—The fund referred to and required under § 206 is the reserve or emergency fund specified in § 205. Attorney-General Rep., 1902, page 201.

§ 206. Reincorporation of existing societies.

Any existing domestic corporation, transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, may reincorporate under the provisions of this article, under its existing corporate name, by filing with the superintendent the declaration, required by this article, signed and duly acknowledged by a majority of its board of directors, with a statement in like manner signed and acknowledged by them, that such corporation has accumulated the fund required by this article of corporations formed thereunder, and that the same is deposited in bank or trust company, to be held and maintained for the payment of losses by death, sickness, physical disability or other purposes for which such fund must be held, and the certificate of the attorney-general of the state, whereupon the superintendent shall record, and deliver to such corporation, a certified copy of such declaration and of such certificate, together with his license to transact business, and upon filing the same in the office of the clerk of the county wherein its principal office is located, the same shall thereupon be deemed to be incorporated under the provisions of this article. It shall not be obligatory upon any such existing corporation, to reincorporate hereunder, and any such domestic corporation

may continue to exercise all the rights, powers and privileges not inconsistent with this article, pursuant to its articles of association or incorporation, the same as if reincorporated under this article.

Source.—Former § 206; originally revised from L. 1883, chap. 175, '§ 12, as amended by L. 1887, chap. 285.

ALTERATION OF CHARTER.—A company formed for the purpose of transacting the business of assessment life insurance cannot alter its charter to include casualty insurance if thereby the acquired rights and liabilities of existing policyholders are altered. In *re* Chenango Mut. Relief Society, Attorney-General Rep., 1892, page 293.

When a co-operative insurance association, incorporated under chap. 175 of 1883, reincorporates under section 206, its corporate entity is not changed, but it merely becomes entitled to the benefits and privileges of the latter act. Matter of Empire State Supreme Lodge, 118 App. Div., 616.

Under § 209, the policyholders have the sole power to adopt by-laws governing the number of directors and fixing their term of office; the executive committee of a co-operative assessment insurance corporation reincorporated under § 206 of the Insurance Law cannot adopt by-laws fixing the number and terms of office of directors without due notice to the policyholders, and directors elected pursuant to such by-laws are not entitled to office. The validity of such an election may be tested in a proceeding taken under § 27 of the General Corporation Law. Matter of Empire State Supreme Lodge, 118 App. Div., 616; *aff'g* 53 Misc., 344.

A corporation formed under chap. 175 of 1883, and desiring to reincorporate under the provisions of § 206 of the Insurance Law, must file with the superintendent the declaration required, namely, that such corporation has accumulated the fund required by this article of corporations formed under that article. In *re* Chenango Mut. Relief, Attorney-General Rep., 1893, page 93.

The fund referred to and required under § 206 is the reserve or emergency fund specified in § 205. Attorney-General Rep., 1902, page 201.

§ 207. Visitation by superintendent; proceedings to restrain corporation from doing business.

All corporations, associations and societies to which this article is applicable, with their books, papers and vouchers, shall be subject to visitation and inspection by the superintendent of insurance or such person as he may designate. The superintendent may address any inquiries to any such corporation, association or society in relation to its doings or condition, or any other matter connected with its transactions relative to the business contemplated by this article. All officers of such corporation, association or society shall promptly reply in writing to all such inquiries,

under the oath of its president or secretary or other officers, if required. Whenever it shall appear to the superintendent of insurance on investigation or examination that the actual expenses of management of any corporation, association or society to which this article is applicable, whether heretofore or hereafter authorized or permitted to do business within this state, for the year preceding the year in which such investigation or examination is made, were more than thirty-five per centum of the cash income actually received by it from premiums, assessments and membership fees, the authority or renewal of authority, if it be a foreign corporation, association or society, shall be revoked and the superintendent shall cause notice of such revocation to be published for four weeks in the state newspaper published in the county of Albany, and no new insurance shall thereafter be written by such corporation, association or society within this state; and if it be a domestic corporation, association or society, it shall be the duty of the superintendent of insurance to cause to be served on the president or other officer of such corporation, association or society, a notice in writing to immediately cease the transaction of new business and, in the event of their failure so to do, he shall report the facts of such investigation and examination and his proceedings thereunder, which shall be prima facie evidence of the facts therein stated, to the attorney-general, who if he approves of the same upon investigation by him after notice to such corporation, association or society, is hereby authorized thereon to institute in the same manner and to prosecute any and all like proceedings as are now authorized or permitted against an insolvent corporation including the appointment of a temporary and permanent receiver or receivers of such corporation, association or society and the distribution of the assets of the same, and powers and jurisdiction to grant like remedies are hereby conferred upon the supreme court of this state upon his application. When the superintendent, on investigation, shall be satisfied that any corporation organized under the laws of this state, doing business in this state of the character defined in this article is insolvent because of matured death claims or other obligations due and unpaid exceeding its assets and death or disability assessments or periodical calls made or in process of collection at the date of such investigation, or has ex-

ceeded its powers, failed to comply with any provision of law, or is conducting business fraudulently, he shall report the facts to the attorney-general, who, if he shall be of the opinion that the facts require such action, must thereupon apply to the supreme court, at a special term thereof, within the judicial district in which the principal office of such corporation, association or society within this state is located, for an order requiring the officers of such corporation, association or society to show cause, at a reasonable time and place within such district, why such corporation, association or society should not be restrained from continuing to transact business, with power to the court to adjourn the hearing thereon from time to time, not exceeding sixty days in all.

Source.—Former § 207, as amended by L. 1905, chap. 569; originally revised from L. 1883, chap. 175, § 13, as amended by L. 1887, chap. 285, § 14.

See § 1197, Penal Law. Neglect of officers to make a report or to make a false report, a misdemeanor.

The limitation imposed by this section applies to companies which unite both life and casualty insurance in the same policy. Opinion of Attorney-General, August 29, 1907.

The right of action, if any, against the directors of a co-operative and assessment life insurance association, arising out of their diversion and misapplication of its safety fund, inheres in the receiver of the association appointed in an action for its dissolution. *Gifford v. Clapp*, 44 App. Div., 192.

§ 208. Hearing thereon.

Such corporation, association or society, in case it is alleged to be insolvent, to have exceeded its powers, failed to comply with any other provision of law, or is conducting its business fraudulently, as specified in the last paragraph of the preceding section, shall be entitled to be heard, and to a trial by jury of the facts stated in the report, if the same shall be traversed, and to examine papers and witness under oath in the usual mode of trials of actions. If the trial is by jury the court shall submit to the jury specific requests to find covering the matter in issue separately, and the jury shall return a special verdict upon each question submitted, and if by such verdict it shall be found that the corporation, association or society is insolvent because of matured death claims or other obligations due and unpaid exceeding its assets as hereinbefore provided, or has been conducting business fraudulently, the court may render judgment that it and each offi-

cer thereof be perpetually enjoined from exercising any corporate rights, privileges or franchises, and that it be dissolved and that a receiver be appointed, an account taken, and an equitable distribution of its property among its creditors and members be made. If no charge of insolvency is made in such report, or, if made, is not established by the verdict of the jury, but it shall be found by such verdict that the corporation, association or society has exceeded its corporate powers or failed to comply with any provision of this article or has conducted its business unlawfully, the court may make and enter judgment enjoining and restraining it from the commission of such acts or such of them as the court may determine, and in case of failure to desist therefrom within the time to be specified in such judgment that the corporation be dissolved.

Pending the trial of the facts stated in such report, the court may, upon motion of the attorney-general and upon notice to the corporation, association or society, grant an injunction restraining it and its directors and other officers from collecting any debt or demand and from paying out or in any way transferring or delivering to any person any money, property or effects during the pendency of the proceedings except by direction of the court, and may appoint one or more temporary receivers of its property, with all the powers of temporary receivers in such cases.

Neither this nor the preceding section shall in any way apply to or abridge any of the rights or privileges of fraternal beneficiary societies, orders or associations, as defined and provided for by article seven of this chapter, or to the casualty department of any casualty insurance corporation, association or society upon the co-operative or assessment plan as defined and provided for by this article, or to any co-operative assessment corporation, association or society lawfully transacting industrial or health insurance exclusively or both exclusively but whose maximum policies therefor do not in any case exceed the sum of two hundred dollars.

Source.—Former § 208, as amended by L. 1905, chap. 569; L. 1906, chap. 326. Last paragraph from § 3, L. 1905, chap. 569; originally revised from L. 1883, chap. 175, § 13, as amended by L. 1887, chap. 285.

DEATH CLAIMS.—Holders of death claims must have their status defined as of the date of the commencement of the proceedings. *Matter of E. R. F. L. Assn.*, 131 N. Y., 354.

§ 209. Corporations subject to this article; annual meetings; examinations; transfers of risk; reinsurance.

Every corporation, company, society, organization or association of this or any other state or country transacting the business of life or casualty insurance upon the co-operative or assessment plan, as defined in this article, including those heretofore organized with a capital stock and transacting such business, but not including any that shall hereafter be organized with a capital stock, shall be subject to all the provisions of this article, and not to the provisions of article two, and every such corporation, company, society, organization or association of this state, shall hold within the county in which its principal office is located in this state, a stated annual meeting of their members or policy holders or representatives of local boards of subordinate bodies, in such manner and subject to such regulations, restrictions and provisions as the constitution and by-laws of the same may provide. In cases of secret or fraternal societies having a grand or supreme body, such meeting of the supreme or grand body may be at such time and place as may be designated by it. At such meeting a full and specific report of all receipts and expenditures of the preceding year or since the last meeting, as the case may be, shall be submitted. Not less than five days' notice of each meeting shall be given to each director and to each member and policy holder, who shall have been such for thirty days, in such manner as the by-laws may direct, except that in lieu thereof such notice may be given to the subordinate body of a society having a grand or supreme body, or to a local board subordinate to the association. Every such association, corporation or society, other than secret fraternal societies now authorized to do business in this state, must hereafter, before the adoption of any by-law or amendment thereto, cause the same to be mailed to the members and directors of such association, society or corporation, together with a notice of the time and place when the same shall be considered, which notice shall be the same as hereinbefore required for stated meetings. All associations, societies, companies, corporations or organizations now transacting or hereafter desiring to transact the business of life or casualty insurance in this state upon any other plan than that defined in and by this article, shall comply

with all the provisions of the general life and health insurance laws. No such corporation organized under the laws of this state shall transfer its risks to or reinsure them in any other corporation unless the contract or transfer or reinsurance is first submitted to and approved by a two-thirds vote of a meeting of the insured called to consider the same, of which meeting a written or printed notice shall be mailed to each member, certificate holder or policy holder at least thirty days before the day fixed for such meeting. If such transfer or reinsurance shall be approved, every member, certificate holder or policy holder of the corporation who shall file with the secretary thereof within ten days after the meeting a written notice of his preference to be transferred to some other corporation than that named in the contract, shall be accorded all the rights and privileges, if any, in aid of such transfer as would have been accorded under the terms of such contract had he been transferred to the corporation named therein. No such corporation, association or society organized under the laws of this state shall transfer its risks or assets or any part thereof to, or reinsure its risks or any part thereof in any insurance corporation or association of any other state or country which is not at the time of such transfer or reinsurance authorized to do insurance business in this state under the laws thereof. No corporation, company or association, possessed of a capital stock, as specified in this section, shall advertise such capital stock in or on any printed matter, advertisement, policy or certificate issued or circulated, or to be issued or circulated in this state; nor shall any agent or broker or solicitor advertise it as a stock company, or as possessed of a capital stock, but its total assets may be advertised as assets.

Source.—Former § 209, as amended by L. 1894, chap. 271; originally revised from L. 1883, chap. 175, § 16, as amended by L. 1889, chap. 184.

See § 1196, Penal Law. Officer transferring insurance to company not authorized to do business in this state, a misdemeanor.

See § 28 et seq., General Corporation Law, chap. 28 of 1909. Election of directors, annual meetings.

The management of such companies cannot be confided to a portion of the membership to the exclusion of any other portion thereof. Attorney-General Rep., 1893, page 114.

Under § 209, the policyholders have the sole power to adopt by-laws governing the number of directors and fixing their term of office; the executive

committee of a co-operative assessment insurance corporation reincorporated under § 206 of the Insurance Law cannot adopt by-laws fixing the number and terms of office of directors without due notice to the policyholders, and directors elected pursuant to such by-laws are not entitled to office. The validity of such an election may be tested in a proceeding taken under § 27 of the General Corporation Law; where a co-operative insurance company originally incorporated under chap. 175 of 1883, reincorporated under § 206 of the Insurance Law, its corporate entity is not changed, but it merely becomes entitled to the benefits of said Insurance Law. Matter of Empire State Supreme Lodge, 118 App. Div., 616; aff'g 53 Misc., 344.

Every insurance corporation other than secret fraternal societies, must, before the adoption of by-laws cause the same to be mailed to the members and directors with a notice of the time and place when the same shall be considered. Matter of Empire State Supreme Lodge, 118 App. Div., 616.

By sections 201 and 209, co-operative life and casualty companies are made subject to the provisions of Article 6 herein. Opinion of Attorney-General, August 29, 1907.

§ 210. Payment of maximum amount of policy; agreements for benefits; notice of assessment.

Every policy or certificate hereafter issued by any corporation doing business under this article, and promising a payment to be made upon a contingency of death, sickness or accident, shall specify the sum of money which it promises to pay upon each contingency insured against; and the number of days after receipt of proof of the happening of such contingency on which such payment shall be made. Upon the occurrence of such contingency, unless the contract shall have been avoided by fraud, or by breach of its conditions, the corporation shall be obligated to the beneficiary for such payment at the time and to the maximum amount specified in the policy or certificate. If the superintendent of insurance shall be satisfied upon investigation that any such corporation has refused or failed to make such payment for thirty days after it became due, and after proper demand, he shall notify the corporation to issue no new policies or certificates until such indebtedness is fully paid; and no officer or agent of the corporation shall make, sign or issue any policy or certificate of insurance while such notice is in force.

No corporation organized or transacting the business of life or casualty insurance under the provisions of this article shall hereafter make any promise or agreement with its policy or certi-

ificate holders or members for the payment of money upon the expiration of a fixed period unless on account of death or disability; and no foreign corporation, association or society authorized to transact the business of life or casualty insurance under the provisions of this article, which shall hereafter make any such contract, shall receive a license or the renewal of its license to transact the business of life or casualty insurance under the provisions of this article, provided that nothing in this section contained shall modify or in any way limit subdivision seven of section one hundred and seven of this chapter.

Each notice of assessment, premium or periodical call made by any such corporation, association or society, upon its members or any of them, shall truly state the cause and the purpose of the same, and if the amount paid on the last death claim paid has not been paid in full at its maximum face value, the name of the deceased member, and the maximum face value of the certificate or policy, and the reason why not paid in full.

An affidavit made by the officer, broker or clerk of any such corporation, association or society, having charge of the mailing of such notice, that such notice was mailed, stating the date of mailing, shall be presumptive evidence thereof.

Source.—Former § 210, as amended by L. 1906, chap. 326; originally revised from L. 1883, chap. 175, § 17, as amended by L. 1887, chap. 285.

Amended by L. 1911, chap. 536.

Waiver of all rights to the provisions of §§ 205-210 is not in accordance with the provisions of article VI of the Insurance Law. *In re Ind. Benefit Assn.*, Attorney-General Rep., 1892, page 427.

MORTALITY ASSESSMENTS.—The provision of chap. 321 of 1877 (now contained in § 92) providing that before a forfeiture of a life policy can be declared for non-payment of premiums or interest, notice must be mailed to the holder, stating that unless the premium or interest due was paid within thirty days, the policy would be forfeited, does not apply to mortality assessments. *Merriman v. K. M. B. Assn.*, 138 N. Y., 116.

Irregularities on the part of the association does not relieve members of the payment of assessments. *Ins. Co. v. Belknap*, 12 Cush. (Mass.), 140.

ULTRA VIRES.—An association is not bound to accept a candidate for membership, and if, in so doing, it imposes conditions beyond the constitutional powers given it by its constitution, but not illegal, and these conditions are repudiated by the other party to the contract, there is no acceptance thereof. *Palmer v. Commercial Assn.*, 53 Hun, 601; 25 St. Rep., 243; 6 N. Y. Supp., 870.

UNAUTHORIZED POLICIES.—Co-operative life and casualty insurance companies cannot issue policies with cash surrender value. Attorney-General Rep., 1893, page 114.

Assessment insurance companies cannot issue policies, the premiums of which are fixed and definite and payable at certain times. In re Chenango Mutual Relief, Attorney-General Rep., 1892, page 416.

Insurance policies written by co-operative companies must be for a fixed sum. Preferred Masonic Mutual Accident Assn., Attorney-General Rep., 1892, page 400.

Insurance policies written by co-operative companies must be for a fixed sum, which the companies and their members are bound to pay. In re Merchants' Life Assn., Attorney-General Rep., 1893, page 118; In re National Life Assn., *id.*, 104; In re Ind. Ben. Assn., *id.*, 194.

Assessment corporations may not issue policies providing for the payment of fixed annual or monthly dues, or dues for any period, at least, without adding the further condition that extra dues must be paid, if necessary, sufficient to meet the maximum amount in a single policy. Attorney-General Rep., Oct. 20, 1892.

A certificate of a mutual relief society cannot provide for conditions, which may not produce enough to meet the maximum amount in a single policy. Attorney-General Rep., Dec. 13, 1892.

Policies or certificates of insurance issued by foreign co-operative insurance companies should contain an expressed provision authorizing additional assessments and providing for additional payments in case the sums provided for in the certificate contract become inadequate to immediate losses by death or otherwise as they may accrue. In re Springfield Mut. Life Assn., Attorney-General Rep., 1896, page 161.

CONSTRUCTION OF POLICY.—Policies of insurance are choses in action, and are governed by the same principles applicable to other agreements involving pecuniary obligations. *St. John v. Am. Mut. Ins. Co.*, 13 N. Y., 31; *Olmstead v. Keyes*, 85 N. Y., 593.

The rule that an insurance contract is to be construed most strongly against the insurer is to be resorted to only where the language or some of the terms of the contract, after the use of such helps as are proper, remain of doubtful import. *Foot v. Aetna L. Ins. Co.*, 61 N. Y., 575.

The contract between a member and the corporation is contained in the constitution and the by-laws, and they should be considered together. *Poultney v. Bachman*, 31 Hun, 49.

The constitution, by-laws and the context of the certificate of membership in a mutual benefit association, taken together, form the contract between it and the members, and by it the rights of the latter must be determined. *Farmers' Loan & T. Co. v. Aberle*, 18 Misc., 257; *aff'd* 19 App. Div., 79.

The rights and liabilities of the parties to a death claim upon the funds of an insolvent mutual aid association in the hands of a receiver are measured by the contract created by the constitution, by-laws and certificate of membership, provided the same were authorized by law. *People v. Grand Lodge*, 156 N. Y., 533; *aff'd* 88 Hun, 621.

Provisions of the constitution and by-laws of a benevolent society, allowing benefits "in case of sickness," and providing that "when any member takes sick," he shall be entitled to such benefits "if it be so that he is not able to

attend to his daily labor," do not extend to a case of a permanent bodily injury which does not affect the general health of the person injured. *Kelly v. Ancient Order of Hibernians*, 9 Daly, 289.

Where the constitution provided that "a total and permanent disability to perform or direct any kind of labor or business, or upon reaching the age of seventy years, shall entitle a member holding a certificate of endowment so disabled or aged to the payment of one-half of the endowment to which he would be entitled at death," a member, who accidentally lost all the fingers of one hand, could not recover the one-half as it was not a total disability within the constitution. *Hutchinson v. Supreme Tent*, 68 Hun, 355; 52 St. Rep., 199; 22 N. Y. Supp., 801.

A provision in a certificate of membership in a mutual life association, evidently contemplating a mortuary assessment to meet each death loss, will prevail over a clause of the by-laws of the association tending to limit the number and amount of the assessments to be levied, inconsistent therewith, though the application stipulates that the by-laws shall be part of the contract; it not appearing that the applicant's attention had been called to the clause. *Fitzgerald v. Equit. R. F. L. Assn.*, 3 N. Y. Supp., 214; 18 St. Rep., 914.

STATUTE OF LIMITATIONS.—A stipulation creating a short statute of limitations in favor of the insured, within which period the insurer must test, if ever, the validity of the policy, is not void as against public policy. *Wright v. Mut. Ben. Assn.*, 43 Hun, 61; *aff'd* 118 N. Y., 237.

BENEFICIARY.—In case the insured failed to designate his beneficiary, the amount payable by the certificate is payable to the legal representatives of the member, to be distributed according to the terms of the contract; the insured has a vested interest in the certificate of which no one can divest him. *Simon v. O'Brien*, 87 Hun, 160; 33 N. Y. Supp., 815; 67 St. Rep., 460.

Under a policy on the life of a member, his family was designated as the beneficiary thereof. The family consisted of the wife and one daughter. The daughter afterwards married and died. Held, that the wife and daughter were the beneficiaries, because they constituted the family of the deceased when the contract was consummated, and when the daughter died the mother became entitled to the benefit of the appointment and the proceeds of the policy. *Brooklyn Masonic M. R. Assn. v. Hanson*, 53 Hun, 149.

The act of incorporation of an association after declaring that one of its objects was to assist the families of deceased members, authorized it to accumulate a fund to be paid over to the families, heirs or representatives of deceased members, or to such person or persons as such deceased members may, while living, have directed, and the by-laws provided that in case of failure of or imperfect designation, then the amount should be paid to the legal heirs of the deceased member, where the beneficiary died before the member, it was held that the wife of the member was included in the words "legal heirs." *Walsh v. Walsh*, 66 Hun, 297.

The words "legal representatives" ordinarily mean executors or administrators, and that meaning will be given them in any instance unless there be facts existing showing that the words were not used in their ordinary sense. *Sulz v. M. R. F. L. Assn.*, 145 N. Y., 563; *rev'g* 83 Hun, 139.

Where the charter of the insurer or the statute under which it was insured does not forbid the insured to make the policy payable to whomever

he may appoint, and there is no evidence tending to impeach the good faith of the transaction, a policy on the life of the insured made payable in case of death to another, though not having an insurable interest, must be paid by the insurer. *Freeman v. Nat. Ben. Soc.*, 5 St. Rep., 82; *Fulmer v. Union Mut. Assn.*, 12 St. Rep., 347.

In a certificate of membership taken out by a H. M. Case, the beneficiary was named as "Mrs. H. M. Case or lawful heirs." Subsequently the wife of the member dies leaving him surviving a daughter and the said H. M. Case was remarried. Held, that the daughter, and not the second wife, was entitled to the benefits. *Day v. Case*, 43 Hun, 179.

Where the wife, under an agreement of separation, had acquired the benefit certificate issued to her husband upon her promise to pay future assessments, which she paid with the knowledge of the husband, she acquired thereby a vested interest in the certificate of which her husband could not deprive her. *Conselyea v. Supreme Council*, 3 App. Div., 464.

Where the right of a member of a benefit society to designate a beneficiary is unrestricted at the time when a certificate of insurance was issued to him, it cannot be affected, so as to defeat a recovery upon the certificate, by by-laws subsequently enacted by the supreme lodge of the order declaring, generally, that the beneficiary must be a member or members of his family or must be one related to him by blood or a person who shall be dependent upon him. *Spencer v. Grand Lodge*, 22 Misc., 147.

Where the member designated as beneficiaries "my legal heirs," it was held that the word "heirs," as it is generally understood, means and includes only next of kin or relations by blood, and excludes the widow, yet it may include other than blood relations where the intention that it should is shown. *Kaiser v. Kaiser*, 13 Daly, 522; 1 St. Rep., 258.

Where the company agreed to pay upon the death of a member the sum specified in his certificate to the beneficiary named, and to the surviving members of the class to which he belonged, "share and share alike," a separate action was maintainable against the company, by one of the surviving members of the class, to recover his proportionate share of the sum. *Emmeluth v. H. B. Assn.*, 122 N. Y., 130.

The certificate holder has the right to name a beneficiary and is not restricted to any particular class or relationship, and where there is nothing in the by-laws of the insurer, or in the certificate, expressly restricting such right, the insurer had the power to issue it, and it is valid although the beneficiary is not related to the member. *Eckert v. Mut. Relief Soc.*, 2 N. Y. Supp., 612; 17 St. Rep., 877.

LIABILITY OF COMPANY.—The relations between the company and its members are those of contractors, the contract being the policy, by which the liabilities of the company are to be determined. *Hencken v. V. S. Life Ins. Co.*, 11 Daly, 289; aff'd 98 N. Y., 627.

Upon the compliance by the applicant with the requirements of the rules and regulations of the society they are called upon to cause an assessment to be made and collected, and to pay to the party entitled thereto the money due; the applicant is under no obligation, in the first place, to compel an assessment. *O'Brien v. Home Ben. Soc.*, 51 Hun, 495; 21 St. Rep., 640; 4 N. Y. Supp., 275.

A policy which does not contain a provision obligating the association to pay or the members to contribute towards paying the maximum amount of the policy, or agrees that in the event that the amounts are insufficient, the sum raised shall be divided pro rata among the holders, may not be issued by an assessment association. Attorney-General Rep., Jan. 25, 1893.

Under Article VI, a policy must state a specific sum to be paid and an obligation to pay the maximum amount so specified, and an endorsement on the back of the policy which provides that in case the reserve fund is impaired it shall be adjusted by an assessment in addition to the regular mortuary call, does not constitute an agreement on the part of the parties that an assessment shall be made sufficient to meet all contract obligations. Attorney-General Rep., Feb. 3, 1893.

The certificate of an industrial benefit association must provide for assessments sufficient to meet the maximum amount in a single policy. Attorney-General Rep., May 5, 1893.

A policy should authorize extra assessments by clear expression; a provision in the by-laws or charter for an emergency fund and its restoration within six months after it has been used is not sufficient. Attorney-General Rep., March 26, 1897.

An action may be maintained on a policy by which the company has undertaken to pay a fixed sum from the "death fund," or from moneys realized to such fund from mortuary assessments on all the members, though no such assessment has been made. The omission of the company to make it, where it is shown that there is a sufficient number of members to yield an assessment sufficient to pay the claim, creates an obligation, the same as if the fund were on hand from which to pay the amount of the policy, as, in the absence of proof to the contrary, it will be presumed that the assessment would have realized the full amount. *Fitzgerald v. Equit. R. F. L. Assn.*, 5 N. Y. Supp., 837.

The failure of an insurance association to assess its members when it is bound to do so renders it liable; the member's remedy is not limited to an action in equity to compel the performance of that duty. *Darrow v. Family Fund Soc.*, 116 N. Y., 537.

By a certificate issued by the defendant, the conditions attached thereto, and its by-laws, it agreed, upon the death of the member holding the certificate to make an assessment upon its members and pay over the proceeds, not exceeding \$2,000. In an action upon the certificate, held, that upon refusal to make an assessment, an action at law was maintainable for breach of the contract; that, while it seems an equity action is maintainable to compel defendant to make and collect an assessment and pay over the amount stipulated, plaintiff was not limited to that remedy. *O'Brien v. Home Benefit Soc.*, 117 N. Y., 310.

A mutual assessment company, which contracts to pay death claims from assessments among its members, and to make such assessments upon the occurrence of a death, cannot lie by and omit to put in operation the means possessed by it to obtain the fund, and omit payment because of its own neglect of duty; this would be to take advantage of its own wrong, and it would operate as a fraud on the beneficiary under the certificate. *Fitzgerald v. Equitable Res. Fund Assoc.*, 15 Daly, 229; 24 St. Rep., 493; 5 N. Y. Supp., 873.

Where the association has in its hands moneys of a member illegally exacted, the defense of forfeiture for non-payment was not available to such association. *Knight v. Supreme Council*, 24 St. Rep., 845.

BY-LAWS.—Where a mutual benefit insurance company makes a by-law changing the contingency on which a specified payment is to be made so that it affects a vested right of the members, such by-law is unreasonable, and the company has no power to make it. *Weiler v. Equitable Aid Union* 92 Hun, 277; 36 N. Y. Supp., 734; 71 St. Rep., 842.

LIABILITY OF MEMBER.—The liability of a member of an assessment insurance company to pay a call issued by the receiver of such a company must be determined by the contract between the member and the company *Attorney-General Rep.*, 1897, page 93.

Members are liable to but one assessment to pay each death claim; it is immaterial as to whether enough was realized on the assessment made to pay the claim. *People ex rel. Myers v. M. G. & B. Assn.*, 126 N. Y., 615.

The neglect of a member to pay an assessment for thirty days after notice thereof determines the membership of the delinquent; the member is liable for the amount of all assessments previously made, and also for all losses happening prior to the time when he ceased to be a member, though no assessment therefor had been made. *McDonald v. Ross-Lewin*, 29 Hun, 87.

Where the by-laws of an assessment accident insurance association provide: "Members of this association may at any time resign, thereby relinquishing their claims upon, or privileges under, said association; provided however, that all dues and assessments shall have been paid to the date of the resignation." A member of the association who terminates his membership, whether by resignation or otherwise, and who pays all premiums and assessments levied upon him up to that time, is not liable for the amount of an assessment subsequently levied by a receiver of the association, pursuant to an order of the court, to pay claims against the association which accrued during his membership. *Gray v. Daly*, 40 App. Div., 41.

SUICIDE OF MEMBER.—The suicide of a member of a mutual benefit association does not come within the meaning of the provision contained in a certificate that it should be void if the assured should die "in the violation of, or attempt to violate, any criminal law." *Darrow v. Family Fund Soc.*, 116 N. Y., 537; *Freeman v. Nat. Benefit Soc.*, 42 Hun, 252.

FRAUDULENT REPRESENTATION.—In an action brought to recover an amount alleged to be due under a mutual benefit assurance certificate, the insurance company may show that the member made false representations upon procuring the certificate, which representations were a part of the contract. *Mayer v. Equit. L. Assn.*, 42 Hun, 237.

In an application for membership the applicant stated his age to be sixty years, and that any untrue statement therein would forfeit the applicant's right to any benefits. In an action upon the certificate, it appeared that it was the custom of the order not to accept as member one over sixty, and that the applicant was at least sixty-one. Held, that the false statement was material, and that the action was not maintainable. *Preuster v. Supreme Council*, 135 N. Y., 417.

EVIDENCE.—Where the question of membership is in issue any evidence tending to show that deceased was not a member is admissible. *Cramer v. Masonic Life Assn.*, 30 St. Rep., 609; 9 N. Y. Supp., 356.

BURDEN OF PROOF.—The issue to a person by an assessment life insurance association of a certificate of membership therein establishes *prima facie* the fact of membership, and throws upon the association the burden of proving that the person by some act had lost such standing; such a certificate is assignable after a refusal by the association to pay the loss. *Meagher v. The Life Union*, 65 Hun, 354.

Where the policy bound the company to maintain a death fund, which, if depleted, must be supplied by assessments, to be levied by the company, the member was not bound, as a condition of recovery, to show that defendant had in the death fund money sufficient to pay his claim, nor that an assessment, if levied, would have produced the required amount. *Cushman v. Family Fund Soc.*, 36 St. Rep., 856; 13 N. Y. Supp., 428.

If there is an absolute agreement to pay assessments in a member's contract or the by-laws, a receiver may collect assessments for losses sustained before the association was placed in charge of a receiver; contra, if no such agreement exists, but member forfeits all rights. *Attorney-General Rep.*, Jan. 19, 1897.

A foreign mutual life association can only be permitted to transact in this state such kind of business as a like domestic corporation is authorized to do and may not issue policies which provide for payment in advance of specific amounts, but do not contain a provision requiring additional assessment if the exigencies of the company should require. *Attorney-General Rep.*, May 21, 1896.

A scheme by which the purchaser of a grave stone is to pay for the same in weekly instalments until the amount agreed upon is paid, but the title of the stone is not vested in the purchaser's estate until his death, and if death occurs prior to the last payment, stone shall vest in his estate, clearly falls within the definition of insurance. *Attorney-General Rep.*, Oct. 17, 1903.

Where an action was brought on a certificate issued by the defendant by which it agreed to pay to the beneficiary "all the amount realized from one assessment, not exceeding \$2,000," the burden of proving that the amount which would be raised by one assessment exceeded \$2,000 rested on the plaintiff, and that, in the absence of evidence to that effect, there was no presumption that it would equal that amount. *O'Brien v. Home Ben. Soc.*, 46 Hun, 426.

NOTICE NOT GIVEN.—The suspension of a member of a benevolent society under a provision of its constitution providing for the suspension of a member failing to pay an assessment levied by the society within forty days after the date of the notice of the assessment, is illegal, where the notice has not been served upon the member. *People ex rel. Crowley v. Supreme Council*, 23 Abb. N. C., 323.

Where the constitution of a mutual benefit association provides that when an assessment is made the secretary shall at once notify the members, and each member shall pay the same within thirty days from the date of the notice, under penalty of forfeiture, the omission to pay an assessment levied thirty-four days before the member's death is no cause for forfeiture when

the notice was not given until thirteen days after levy of the assessment. *Knight v. Supreme Council*, 6 N. Y. Supp., 427.

Under a by-law providing for the dropping of a member in case of a neglect to pay dues for a certain time after receiving notice of his indebtedness, the society has no right to drop a member, unless he has received such notice; mere proof that such notice was mailed to him properly addressed is not sufficient to authorize such action, especially where it is shown that he was absent from home at the time. *People ex rel. McQuien v. Theatrical Assn.*, 29 St. Rep., 405; 8 N. Y. Supp., 675.

A failure to conform to the statutory provision with regard to notice will prevent an association from declaring a forfeiture of a policy for non-payment of assessments. *Warner v. Association*, 100 Mich., 157.

INSUFFICIENT NOTICE.—Where one of the rules of a company provides that "a notice shall be sent announcing each assessment and the number thereof to the last post-office address given to the association by each member," a forfeiture cannot be based upon a notice which omits the number of the assessment. *Greenwald v. United Life Ins. Co.*, 18 Misc., 91.

WAIVER OF PROOFS.—Refusal of an insurance society to furnish blanks for proof of death, upon application therefor by the beneficiary, upon the ground that the deceased had forfeited his membership by failure to pay an assessment, is a waiver of proof and notice of death. *Payn v. Mut. Relief Soc.*, 17 Abb. N. C., 53.

Where a corporation, after verbal notice of an injury to the insured, sent one of its medical directors to examine the condition of the wound, it must be deemed to have waived a condition of the certificate requiring written notice to it of such injury. *Martin v. Equit. Acc. Assn.*, 61 Hun, 167; 41 St. Rep., 77; 16 N. Y. Supp., 279.

WAIVER OF FORFEITURE.—In the absence of any agreement, a waiver of forfeiture of a policy of life insurance results only from negotiations or transactions with the insured, by which the insurer after knowledge of the forfeiture recognizes the continued existence of the policy, or does some acts based thereon, or requires the insured by virtue thereof to do some act or incur some expense or trouble. *Ronald v. M. R. F. L. Assn.*, 132 N. Y., 378.

A forfeiture cannot be based upon an assessment or mortuary premium call, of which notice is sent before, but which is not payable until after the death of the insured; a forfeiture for non-payment is waived by the making of subsequent mortuary calls upon the person so in default. *Elmer v. Mut. Ben. Assn.*, 47 N. Y. St. Rep., 35; 19 N. Y. Supp., 289.

The secretary of a benevolent society, although not authorized by its constitution or by-laws to accept payment of dues from members, habitually received such dues, which he paid over to the society. Held, that the society was thereby estopped to deny his authority to accept dues tendered by a member, but refused by him on the ground of want of authority; and that such tender was legally equivalent to payment, so as to render the society liable for the benefit payable on the death of such member, as a member "clear on the books" under its by-laws, he having died before any subsequent meeting of the society or its directors at which the dues might properly have been paid. *Roeding v. Sons of Moses*, 16 Daly, 417; 7 St. Rep., 13; 11 N. Y. Supp., 750.

Any agreement, declaration or course of action on the part of the insurance company which leads the party insured honestly to believe that by conforming to it a forfeiture of his policy will not be incurred, followed by due conformity upon his part, will estop the insurance company from insisting upon the forfeiture, although such forfeiture might be claimed under the express letter of the contract. *Van Bokkelen v. Mass. Ben. Assn.*, 90 Hun, 330.

Where an assessment company received assessments from a member after the same were due, and by a course of such dealing established in the mind of the member a belief that it would continue to receive his assessments in this manner, his claim will not be cut off absolutely by the fact that he is in arrears, under a strict construction of the by-laws, at the time of his death. *King v. Masonic L. Assn.*, 87 Hun, 591; 34 N. Y. Supp., 563; 68 St. Rep., 520.

A certificate of benefit insurance, which has lapsed by default in payment of dues, is not reinstated by the payment of the dues to a receipting clerk who has no power to make a fresh contract, and who delivers a receipt expressed to be on condition that the insured is in good health, as originally, etc., this not being the fact, even though the person making the payment does not read the receipt; the fact that the association asked for proofs of death, and gave instruction in connection therewith, is not a waiver of the forfeiture. *Ronald v. Mut Res. F. Assn.*, 23 Abb. N. C., 271.

Upon the trial of an action, brought to recover the amount of two life insurance policies issued by a mutual benefit association, it was shown that the insurer did not intend to terminate the policies by reason of the failure of the insured to pay a certain assessment levied thereon, provided such assessment was subsequently paid, and the insurer, by a notice to the insured, stated that the policies might be renewed "by immediate payment, if the risk is approved by the association upon receipt of said payment at the home office." Immediate payment was made at the home office, the risk was approved by the insurer and the policies were renewed by it. Held, that the insurer expressly waived its right to insist that the policies were forfeited and was estopped from asserting that they were not in full force at the time of the death of the insured. *Sieburg v. Mass. Ben. Assn.*, 87 Hun, 199.

If a promise is made by the wife of the financial secretary, who is acting for him, to extend the time for payment of an assessment, the certificate will not lapse if the financial secretary was authorized to extend the time of payment. *Teckmeyer v. Supreme Council*, 4 App. Div., 537.

The provisions of a policy requiring a prompt payment of the stipulated periodical payments is a condition precedent, but such prompt payment may be waived by the insurer, and in such case the contract remains in full force. *Baker v. N. Y. Mut. Ben. Asso.*, 27 Wk. Dig., 91; aff'd 112 N. Y., 672.

Evidence that during a period of a year from the time of the organization of a subordinate lodge of an assessment insurance association twenty-three assessments had been levied on the lodge, which, with three or four exceptions, had been paid after they became overdue, without complaint on the part of the supreme lodge, is sufficient to justify a jury in finding that the officers of the supreme lodge waived prompt payment, and that they were estopped from summarily suspending the subordinate lodge, in pursuance of a by-law of the association, for failing to pay the twenty-fourth assessment

until seven days after it became due. *McClure v. Supreme Lodge*, 41 App. Div., 131.

While the unconditional receipt by a mutual benefit association of an assessment from one of its members after the time had expired for its payment, may constitute a waiver of the default of such member and operate to reinstate him in its membership, the receipt thereof by an officer of such association with qualified power will not, in the face of a provision in its constitution that he should not receive such assessment, except where it is tendered in an open meeting of the association, have that effect, unless the payment to him is in some manner ratified by the association. *McGowan v. Cath. Mut. Ben. Assn.*, 76 Hun, 534.

FORFEITURE NOT WAIVED.—If the certificate of membership has lapsed through the member's default, it is not revived by the conditional acceptance of dues, unless the condition be performed. *May v. N. Y. Safety Fund Soc.*, 13 N. Y. St. Rep., 66.

After the death of a person to whom a policy of life insurance had been issued, proofs of death were furnished to the insurance company, and the latter advised the administrator that upon the facts as they then appeared the proofs were approved and the claim would be paid on a specified day, a mortuary call was made by the insurer, assessing its members for approved claims, among which was the claim upon the policy of decedent, and the money was collected, but the corporation did not pay the amount of the policy in accordance with its notice, and notified the administrator of revocation of approval of the claim. Held, that a defense to the action brought on the policy, based upon facts unknown to the insurer at the time of such notice and assessment, had not been waived by it. *Stuart v. Mut. Res. Fund Assn.*, 78 Hun, 191.

The certificate of a benefit society provided that a failure to pay dues over four weeks would avoid the policy, and also that collectors were not authorized to waive forfeiture on receive payment beyond such time. At the time of the death of the insured the dues on the certificate were four weeks in arrears, and thereafter plaintiff paid them to a collector, but the company refused to receive them. Held, that the failure within the time limited caused a lapse or forfeiture of the certificate, and that the payment to the collector did not revive it. *Jackson v. Royal Benefit Soc.*, 15 Misc., 481; 37 N. Y. Supp., 28; 72 N. Y. St. Rep., 179.

Relator, who was a member of the defendant association, failed to pay his annual dues at the time fixed therefor, although he had been given two months' notice thereof. Subsequently, in response to an inquiry as to whether the moneys had been sent and notice that if not a reinstatement would be necessary, he sent a check for the amount, which was deposited in the suspense account. About the same time he received a mortuary call, which stated that neither such notice or the acceptance of the money would be held to waive any forfeiture by reason of non-payment of any previous sum when due. The amount of this call was sent and placed in the suspense account. Relator subsequently refused to sign an application for reinstatement, and the association tendered back the moneys so received by it. Held, that there was no waiver of the forfeiture on the part of the association. *People v. Mut. Res. Assn.*, 15 Misc., 333; 37 N. Y. Supp., 617.

REINSTATEMENT.—A certificate contained a clause which required the members to pay an assessment within thirty days after notice, and providing that if not paid within such time the policy would lapse, but that he may be reinstated for valid reasons. The member was stricken with apoplexy shortly after the termination of a thirty-day notice, from which stroke he subsequently died. Held, that the question whether it was a valid reason should have been submitted to the jury. *Dennis v. Mass. Ben. Assn.*, 47 Hun, 338.

An insane person cannot be deemed to be in good health within the meaning of an insurance policy, where a member after paying the assessments levied upon him for a period of twenty-two years becomes insane, and while in that condition, which continues until his death, omits to pay an assessment, notice of which is served upon him by mail, and the beneficiary of the certificate, some six months thereafter, immediately upon learning of the default in the payment of the assessment, notifies the association of the member's condition and offers to pay the assessment, the beneficiary is entitled to recover upon the certificate, although the company has declined to reinstate the insured, stating as the ground therefor that he was over fifty-five years of age. *McNeil v. Southern T. M. R. Assn.*, 40 App. Div., 581.

EXCUSE FOR NON-PERFORMANCE.—The non-payment of the premium secured to be paid by a life policy on the day on which it falls due will avoid the policy if by the terms of the policy it is so agreed; neither sudden illness nor insanity will excuse the performance of the exact requirements of the contract. *Ingram v. Supreme Council*, 14 N. Y. St. Rep., 600.

FORFEITURE.—The forfeiture of a policy of insurance by a mutual insurance company does not discharge the party whose property was thereby insured from his liability to pay the assessments already made upon his premium note, executed to the company in consideration of such policy. *The Iowa State Ins. Co. v. Prosser*, 11 Iowa, 115.

The member is not necessarily released from liability to assessment by forfeiture of rights under the policy. *Korn v. Ins. Co.*, 6 Crauch, 192; *Ins. Co. v. Underwood*, 3 Gray (Mass.), 210.

§ 211. Change of beneficiary.

Membership in any such corporation, association or society shall give to any member thereof the right, at any time, with the consent of such corporation, association, or society, to make a change in his payee or payees or beneficiary or beneficiaries without requiring the consent of such payee or beneficiaries.

Source.—Former § 211; originally revised from L. 1883, chap. 175, § 18.

RIGHT TO CHANGE BENEFICIARY.—A member of a mutual benefit insurance association has the right at any time to change the beneficiary named in his certificate, by complying with the rules and by-laws of the association. *Fleeman v. Fleeman*, 39 N. Y. St. Rep., 307; 15 N. Y. Supp., 838.

A recital in an indorsement made by the secretary on a certificate that, at the written request of the holder of the certificate, the beneficiary was changed from his brother to his wife, is sufficient evidence of a compliance with the by-laws of the association which provide that a change of bene-

fiary may be made on the written order of the holder of the certificate, signed in the presence of two witnesses. *Gladding v. Gladding*, 29 N. Y. St. Rep., 485; 8 N. Y. Supp., 880.

The consent of the company to a change of beneficiaries is indispensably necessary. *Newman v. John Hancock M. L. Ins. Co.*, 45 Misc., 320.

A certificate issued to a member, then unmarried, was made payable to his daughter. The member was subsequently married and inserted in the certificate the name of his wife after the name of his daughter. The insertion was made without the knowledge of the company. It was held that there was no valid change in the beneficiary named in the application and that the daughter was entitled to the entire fund. *Thomas v. Thomas*, 131 N. Y., 205.

When the certificate of membership and the rules and regulations of a membership life insurance association provide that a member may change his beneficiary "as often as desired, consent of the existing beneficiaries not being required," etc., a beneficiary first named, and who refuses to surrender the policy intrusted to her, acquires no vested rights which prevent a change of beneficiary by the member on his complying with the provisions of the association in that respect. *Martha Stronge v. The Supreme Lodge, Knights of Pythias*, 111 App. Div., 87.

When one insured in a membership corporation having under the by-laws a right to change his beneficiary by designating the change desired, which shall be "duly recorded and endorsed" on his certificate, has duly requested, after the death of his wife, the first beneficiary, that the beneficiary should be "as provided in my will," which change was endorsed on the certificate by the company and recorded in its books, the trustee of the residuary estate of the insured is entitled to recover the amount due. *The Brooklyn Trust Co. v. Seventh Regiment Veteran and Active League*, 113 App. Div., 717.

The beneficiary under a policy issued by a casualty company, doing business under article 2 of the Insurance Law, and which contains no provision permitting the insured to change the beneficiary named, has a vested interest in the policy and not a mere expectancy or inchoate right. *Dunn v. Amsterdam Casualty Co.*, 67 Misc., 109.

INTEREST OF BENEFICIARY.—The beneficiary named in a certificate has an assignable interest therein, though the insured has power to change the beneficiary; in an action against a life association to recover the amount of a policy assigned by a beneficiary to plaintiff the assignor is not a necessary party merely because the assignment was made to secure a loan from the assignee to the insured of a less sum than the amount of the policy. *Lawler v. Nat. L. Assn.*, 83 Hun, 393; 31 N. Y. Supp., 875; 64 N. Y. St. Rep., 785.

Where the designation of the beneficiary is voluntary in the nature of a gift, the courts will require strict compliance with the rules as to change of beneficiary; not so, however, where there is a consideration for the transfer and a vested interest in the fund. *Tidd v. McIntyre*, 116 App. Div., 602.

A person designated as beneficiary of a policy issued by a benefit society, who voluntarily and gratuitously pays the assessments thereon, and not under any contract with the insured, acquires no vested interest therein as against a person afterwards named beneficiary by the insured. *Nix v. Donovan*, 46 N. Y. St. Rep., 21; 18 N. Y. Supp., 435.

Plaintiff was designated by her son as beneficiary of a certificate issued by the defendant, a mutual benefit association, to such son. Thereafter, without plaintiff's knowledge, her son surrendered the certificate to defendant, and received in place of it another certificate designating his wife as the beneficiary. Held, that defendant was not bound to pay to plaintiff the sum mentioned in the certificate, and that the certificate was not operative as a contract and that the power to designate was not lost by one designation. *Deady v. Bank Clerks' Assn.*, 17 J. & S., 246.

A beneficiary who has neglected to obtain the consent of the insurance company to his substitution as the beneficiary under a policy, cannot maintain an action against the insurance company to recover the amount thereof. *Newman v. John Hancock Mut. L. Ins. Co.*, 45 Misc., 320.

A by-law of a mutual benefit insurance society, providing that the beneficiary named in a certificate of membership shall only be changed upon the return of the original certificate, is intended only for the convenience of the society and may be waived by it; the original beneficiary is entitled to repayment out of the fund realized on the certificate at the death of the insured of assessments paid by her in ignorance of the fact that a new beneficiary had been designated. *Southern T. M. R. Assn. v. Laudendach*, 5 N. Y. Supp., 901.

Where a wife who was named as beneficiary died before the insured, and he subsequently married again, on his death the widow is entitled to the funds where there was no subsequent designation. *Matter of Rock*, 49 Misc., 286.

CAPACITY.—In an action to set aside an instrument revoking the appointment of plaintiff as beneficiary under a life insurance policy and appointing defendant instead, on the ground of deceased's mental incapacity to make the same, where the attending physician testified against her capacity, and two old acquaintances testified that deceased was unable at the time to recognize them, the question of capacity was for the jury, and it was error to direct a verdict for defendant. *Henken v. Monaghan*, 49 N. Y. St. Rep., 358; 21 N. Y. Supp., 235.

SURRENDER OF CERTIFICATE.—Where the first certificate has not been received until after the member's death the society has no right to issue a new certificate, as the attempted surrender was incomplete and no rights were conferred thereby. *Luhrs v. Luhrs*, 6 N. Y. Supp., 51.

The "immediate family" of a member is to be determined at his death, and not at the beginning of his membership. *Davin v. Davin*, 114 App. Div., 396.

Where a widow is entitled to the death benefit, provided she did not for any reason live separated from the deceased member, and provided she took care of him during his last illness, the widow's action to recover should be dismissed where evidence shows that she had been separated from her husband for years, and was at the time of his death. *Zajic v. Elian*, 50 Misc., 289.

§ 212. Exemption from execution.

The money or other benefit, charity, relief or aid, paid or to be paid, provided or rendered by any such corporation, association or

society shall not be liable to be seized, taken or appropriated by any legal or equitable process, to pay any debt or liability of a member, or any debt or liability of the widow of a deceased member of such corporation designated as the beneficiary thereof, which was incurred before such money was paid to her or such benefit, charity, relief or aid was provided or rendered.

Source.—Former § 212, as amended by L. 1897, chap. 345; originally revised from L. 1883, chap. 175, § 19; L. 1884, chap. 16.

LEGISLATIVE INTENT.—The legislative intent in the enactment of §§ 212 and 238 of the Insurance Law, to place co-operative and assessment insurance in a class by itself, was to relieve such insurance from the operation of § 52 of the Domestic Relations Law, making insurance money realized by a wife on the life of her husband subject to his debts, where the annual premium paid out of his property exceeds \$500. *Dominick v. Stern*, 79 Misc., 271.

EXECUTION.—The provisions of § 212 of the Insurance Law apply to all corporations, whether incorporated under article VI of the Insurance Law or not, and moneys cannot be reached by a judgment-debtor of a widow receiving such moneys as beneficiary. *People's Bank of Buffalo v. Cushman*, 109 App. Div., 349.

§ 213. Penalties.

Any officer or agent of any such corporation, association or society, subject to any of the provisions of this chapter, who shall neglect or refuse to comply with any such provision, or who shall make in any report or statement any intentionally false or fraudulent statement; or shall refuse to permit the superintendent of insurance or any examiner duly authorized by him for the purpose, to make an examination of its conditions and business, books, papers and vouchers; and any person who shall act within this state as agent, solicitor or collector for any such corporation, association or society, which shall have failed, neglected or refused to comply with or violated any of the provisions of this chapter, or shall have failed or neglected to procure from the superintendent the certificate of authority to transact business in this state required by law, shall forfeit to the people of the state the sum of one hundred dollars for every such offense. If an examination of the condition and business of any such corporation, association or society transacting business in this state shall be prevented by such refusal, the superintendent of insurance shall revoke the certificate of authority issued to such corporation, association or

society; and it shall thereafter be unlawful for it to do business in this state until it shall have submitted to an examination, and the superintendent shall have issued to it a new certificate of authority authorizing it to continue business in this state.

Source.—Former § 213; originally revised from L. 1883, chap. 175, § 20, as amended by L. 1889, chap. 184.

See § 1197, Penal Law. Failure to file report with superintendent a misdemeanor.

§ 214. Exemption of certain societies and subordinate lodges of Odd Fellows and Masons from the provisions of this article.

No society or subordinate lodge or body of any secret, fraternal or industrial society now organized in this state paying only sick benefits, not exceeding two hundred and fifty dollars in the aggregate to any one person in any one year, or a funeral benefit or relief to those dependent on a member not exceeding three hundred and fifty dollars, shall be required to make any report thereof under this article. Subordinate lodges or councils or other bodies by whatsoever name known, of fraternal, secret or industrial societies shall not be required to make an annual report to the superintendent of insurance, when the money, charity, relief or aid is payable by the grand or supreme body of the same, and is derived from assessments upon such subordinates or their members, but such report shall be made and filed by such grand or supreme body. This article shall not prevent the creation of a reserve fund by any corporation, association or society transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, where its funds or its accretions, or both are to be used for the payment of assessments or death losses, or for benefits in case of physical disability only. This article shall not apply to the grand or subordinate lodges of the Independent Order of Odd Fellows as they now exist, or to any grand or subordinate lodge of Free and Accepted Masons, nor to any association or organization of the veteran firemen of any city of the state having a population of five hundred thousand or more. The voluntary unincorporated associations known as the New York Stock Exchange and the Consolidated Stock and Petroleum Exchange of New York, and the

Booksellers and Stationers' Provident Association of the United States are exempted from the provisions of this article. This article shall not prevent any corporation, association or society authorized to do business hereunder from crediting on assessments of its certificate holders or members such ratable sums out of surplus accumulations or reserve funds as they may become entitled to under the terms of their policy or certificate contracts, provided, however, that the amount so credited in any policy year shall not exceed one annual premium on such policy or certificate contract.

Source.—Former § 214, as amended by L. 1894, chap. 399, and L. 1906, chap. 326; originally revised from L. 1883, chap. 175, § 21, as amended by L. 1887, chap. 285; L. 1887, chap. 285, § 7, as amended by L. 1889, chap. 566.

Amended by L. 1911, chap. 536.

An industrial benefit association may not evade the law prohibiting payment of fixed cash payments by providing in policies for the return of a "portion of the premiums actually paid in cash." Attorney-General Rep., Oct. 29, 1895.

§ 215. Corporations may deposit securities with the superintendent of insurance.

Repealed by L. 1911, chap. 536.

§ 216. Quorum.

At the stated meeting for the election of officers, trustees, directors or managers of any such corporation, association or society, a majority of the persons entitled to vote at such meeting shall not be necessary to a quorum.

Source.—Former § 216; originally revised from L. 1883, chap. 175, § 23.

§ 217. Reincorporation.

Any corporation incorporated under chapter one hundred and seventy-five of the laws of eighteen hundred and eighty-three and transacting business under this article is hereby authorized to reincorporate as a stock corporation under its existing corporate name, upon compliance with the provisions of article two of this chapter. Before the superintendent of insurance shall be required to file and record a certificate of such reincorporation, he shall be satisfied that the same has been approved by a majority vote of the members of the company present and voting at a meeting of the insured called to consider the same, of which meeting a written or

printed notice shall have been mailed to each member who shall have been such for thirty days directed to his address appearing on the company's books, at least thirty days before the day fixed for such meeting. Upon such reincorporation said company shall be entitled to the assets and shall be subject to the existing liabilities of the present company, including all contracts, policies or certificates with its members and agreements between such members and the subscribers to any guaranty or reserve fund heretofore made or approved at an annual meeting of the members or which may be ratified at the meeting called to consider such reincorporation.

Source.—L. 1893, chap. 690, §§ 1, 2, 3.

Section 36 of the General Corporation Law, relating to forfeiture of corporate powers, does not refer to a change of form or reincorporation as provided by this section. Attorney-General Rep., March 29, 1916.

§ 218. Admission of minors.

A corporation, association, organization or society transacting the business of life or casualty insurance, or both, upon the co-operative or assessment plan, and incorporated under or subject to this article, may provide by its by-laws for the admission of minors, over eighteen years of age to membership in such corporation, association, organization or society and may by such by-laws prescribe the conditions of such admission and the rights and obligations of minors as members; and no such minor shall by reason only of minority be deemed incompetent to become such member, to contract for insurance provided for by the certificate of membership, or other instrument showing such membership or fixing his privileges, to surrender such insurance or to give a valid discharge for any benefit accruing or for any money payable under the contract of insurance.

Added by L. 1911, chap. 176.

§ 219. Policy to indicate assessment plan.

Every policy or certificate hereafter issued by any corporation, company, society, organization or association transacting business under this article shall have conspicuously printed on the face of such policy or certificate and at the top thereof in capital letters not smaller than great primer roman condensed capitals, the words "assessment system."

Added by L. 1913, chap. 28.

Note.—The purpose of the amendment of this section by chapter 28 of 1913 was to protect the public by requiring assessment associations in this State to more clearly indicate in their contracts the precise scope and character of such contracts.—Ed.

§ 220. Forms of policies or certificates must be filed and approved.

On and after the first day of January, nineteen hundred and fourteen, no policy or certificate of insurance against loss or damage from the sickness, or the bodily injury or death of the insured by accident, shall be issued or delivered in this state by any corporation authorized under this article, until copies of the form thereof have been filed with the superintendent of insurance and formally approved by him. On or before the first day of October, nineteen hundred and thirteen, the superintendent shall make and announce rules and regulations concerning the terms and provisions of such forms of policies and certificates, the manner in which they shall be printed, and the practice to be followed in their submission and approval. The superintendent may, in his discretion, permit any such corporation to continue to use in this state after the first day of January, nineteen hundred and fourteen, any form of policy or certificate, which, prior to October first, nineteen hundred and thirteen, has been duly approved for such corporation under section one hundred and seven of this chapter.

Added by L. 1913, chap. 51. In effect October 1, 1913.

Note.—The purpose of the addition of this section by chapter 51 of 1913 was to require that all policies or certificates issued by health and accident corporations operating upon the co-operative or assessment plan shall be passed upon and approved by the insurance department and that the superintendent must on or before October 1, 1913, make and announce rules and regulations concerning the terms and provisions of such forms of policies and certificates.—Ed.

ARTICLE VII.

FRATERNAL BENEFIT SOCIETIES.

SECTION 230. Definitions and scope of article.

- 231. Benefits, beneficiaries and membership.
- 232. Certificates.
- 233. Funds.
- 234. Incorporation.
- 235. Existing corporations and reincorporation.
- 236. Mergers.
- 237. Foreign societies.
- 238. Place of meeting and liability of officers.
- 239. Limitation upon power to waive provisions of the society's laws.
- 240. Exemption from execution.
- 241. Amendments to constitution and laws.
- 242. Reports and valuations.
- 243. Examinations.
- 244. Revocation of license.
- 245. Exemption of certain societies.
- 246. Taxation
- 247. Penalties.
- 248. Application of other sections of this chapter.
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§ 230. Definitions and scope of article.

1. Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, but not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section two hundred and thirty-one hereof, is hereby declared to be a fraternal benefit society.

2. Any society having a supreme governing or legislative body and subordinate lodges or branches, by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system.

3. Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates chosen directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided that the elective members shall constitute a majority in number and have not less than two-thirds of the votes nor less than the votes required to amend its constitution and laws; and provided, further, that the meetings of the supreme or governing body and the election of officers, representatives or delegates shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy.

4. Except as herein otherwise provided, such societies shall be governed by this article and shall be exempt from all other provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no addition thereto hereafter enacted shall apply to them unless they be expressly designated therein.

Added by L. 1911, chap. 198.

The grand lodge of a society cannot legally be removed from the state; public policy requires that corporations organized under our laws be and at all times remain within the jurisdiction of our courts. Attorney-General Rep., April 15, 1903.

The superintendent may examine a company before granting a certificate to ascertain whether the proposed organization has or has not complied with the law; the insurance department has jurisdiction of all matters relating to the organization of this class of corporations and of the companies when organized. Attorney-General Rep., Jan. 11, 1893.

§ 231. Benefits, beneficiaries and membership.

1. Every society transacting business under this article shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability as the result either of disease, accident or old age, provided that the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years; and also may provide for monuments or tombstones to the memory of its deceased members, and for

the payment of funeral benefits. Such society shall have the power to give a member when permanently disabled or upon attaining the age of seventy years all or such portion of the face value of his certificate as the laws of the society may specify; provided that nothing in this article contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life, which shall be payable upon the death or disability of the member occurring within the term for which the benefit certificate has been issued, or so as to permit any such society hereafter to make any promise or agreement for the payment of money upon the expiration of a fixed period, except as provided in subdivision (b) of subsection one of this section.

(a) Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash and to charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per centum per annum; provided that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions and to contracts affected by such readjustment.

(b) Any society which shall show, by the annual valuation hereinafter provided for, that it is accumulating and maintaining the full reserve required by a table of mortality not lower than the American Experience table and four per centum interest may grant to its members extended and paid-up protection or such withdrawal equities as its constitution and laws may permit: provided that such grants shall in no case exceed in value the portion of the reserve to the credit of the members to whom they are made.

2. Such death benefit shall in certificates hereafter issued be payable only to wife, husband, relative to the fourth degree of consanguinity, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member: provided that, if, after the issuance of the original certificate, the

member shall become dependent upon an incorporated charitable institution, he shall, with the consent of the society, have the privilege of making such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary and, from time to time, may have the same changed in accordance with the laws, rules and regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided that any society may, by its laws, limit the scope of beneficiaries within the above classes. No contract under this article shall be valid which shall be conditioned upon an agreement or understanding that the person to whom the death benefit is made payable shall pay the periodical or other contribution of the member.

3. A society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician and whose examination has been supervised and approved in accordance with the laws of such society; provided that any beneficiary member of the society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members.

Added by L. 1911, chap. 198.

A fraternal mutual benefit association cannot by an amendment to its constitution or by-laws destroy or diminish benefits which it contracted to give its members when they became such, even though a general power to amend be expressly reserved; the above rule is not changed by section 232, Insurance Law (as added by chap 198 of 1911). *Stewart v. Thorburn*, 171 App. Div., 258.

§ 232. Certificates.

Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation — or, if a voluntary association, the articles of association — the constitution and laws of the society and the application for membership and medical examination, signed by the applicant, with all amendments to each thereof, shall constitute the agreement between the

society and the member; and copies of the same, certified by the secretary of the society or corresponding officer, shall be received in evidence as to the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation — or, if a voluntary association, articles of association — constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate, shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership.

Added by L. 1911, chap. 198.

Section 232 of the Insurance Law, as enacted in 1911, does not require the issuance of certificates of membership by fraternal benefit societies. Attorney-General Rep., April 19, 1912.

This section as enacted in 1911 does not require the issuance of certificates of membership by fraternal benefit societies. Attorney-General Rep., 1912, page 220.

§ 233. Funds.

1. A society may create, maintain, invest, disburse and apply an emergency, surplus or other similar fund, in accordance with its laws. Such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein, or become entitled to any apportionment or the surrender of any part thereof, except as provided in subdivision (b) of subsection one of section two hundred and thirty-one of this article. The funds from which benefits shall be paid and from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members or subordinate bodies of the society, together with accretions of such funds; provided that no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress table of mortality as adopted by the National Fraternal Congress, August twenty-third, eighteen hundred and ninety-nine, or any higher standard, with interest assumption not

more than four per centum per annum, nor to write or accept members for temporary or permanent disability benefits, except upon tables based upon reliable experience, with an interest assumption not higher than four per centum per annum.

2. Deferred payments of installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation; and every society shall maintain a fund sufficient to meet such liability, regardless of proposed future collections to meet any such liabilities.

3. A society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies; provided that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated, shall be held to meet the requirements of this article for the investment of funds.

4. Every provision of the laws of a society for payment by its members, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes, or the net accretions of either or any of said funds, shall be used for expenses.

Added by L. 1911, chap. 198.

Amendments to the constitution or by-laws of a mutual benefit association, which nullify or cut down benefits to which a beneficiary has become entitled under his contract, are void and of no effect even where the right to amend has been expressly reserved. *Wright v. Knights of Maccabees*, 196 N. Y., 391.

A mutual benefit association cannot change a constitutional provision that a beneficiary shall be assessed according to age when admitted, without his consent. *Dowdall v. Cath. Mut. Ben. Assn.*, 196 N. Y., 405.

A fraternal benefit society, having classes "A" and "B," cannot transfer funds contributed by certificate holders in class "B" to other classes without the consent of all the members remaining in Class "B." *Attorney-General Rep.*, Nov. 28, 1911.

A member and the society cannot, by any agreement, in which all members of the cash dividend class do not join, take out of the benefit fund any sum as the equitable share of a member. *Attorney-General Rep.*, Feb. 8, 1912.

The exchanging of a member, from one class to another, does not permit the transfer of the amount, to which he would be equitably entitled in the benefit fund of his class, to the other class, without the consent of all members interested in the fund. Attorney-General Rep., March 22, 1912.

Section 36, prohibiting a director from being pecuniarily interested as a member in any loan from a corporation, applies to fraternal beneficiary societies or orders under Article VII. Attorney-General Rep., Feb. 6, 1909.

§ 234. Incorporation.

1. Seven or more persons, citizens of the United States and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this article, may make and sign (giving their addresses), and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

(a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or lead to confusion.

(b) The purpose for which it is formed — which shall not include more liberal powers than are granted by this article, provided that any lawful social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society — and the mode in which its corporate powers are to be exercised.

(c) The place where its principal office shall be located within the state.

(d) The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year, or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body; which election shall be held not later than one year from the date of the issuance of the permanent certificate.

2. Such articles of incorporation, with duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, together with a bond in

the sum of five thousand dollars, with sureties approved by the superintendent of insurance, conditioned upon the return to applicants of the advanced payments, as provided in this section, if the organization is not completed within one year, shall be filed with the superintendent of insurance, who may require such further information as he deems necessary; and, if the purposes of the society conform to the requirements of this article and all provisions of law have been complied with, such superintendent of insurance shall so certify, retain and file the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members, as hereinafter provided.

3. Upon receipt of said certificate from the superintendent of insurance, the society may solicit members for the purpose of completing its organization, and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no society shall incur any liability other than for such advanced payments, nor issue any benefit certificate, nor pay or allow, nor offer or promise to pay or allow, to any person any death or disability benefit until actual. bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches, into which said five hundred applicants have been initiated; nor until there has been submitted to the superintendent of insurance, under oath of the president and the secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions — which shall be sufficient to provide for meeting the mortuary obligation contracted, when valued

for death benefits upon the basis of the National Fraternal Congress table of mortality, as adopted by the National Fraternal Congress August twenty-third, eighteen hundred and ninety-nine, or any higher standard at the option of the society, and for disability benefits, by tables based upon reliable experience, and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per centum per annum; nor until it shall be shown to the superintendent of insurance, by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash not less than one regular monthly payment, as herein provided, per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars, all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses.

4. Such advanced payments shall, during the period of organization, be held in trust and, if the organization is not completed within one year, as hereinafter provided, returned to said applicants.

5. The superintendent of insurance may make such examination and require such further information as he deems advisable, and, upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date thereof. The superintendent of insurance shall cause a record of such certificate to be made, and a certified copy of such record may be given in evidence with like effect as the original certificate.

6. No preliminary certificate granted under the provisions of this section shall be valid after one year from its date or after such further period, not exceeding one year, as may be authorized by the superintendent of insurance, upon cause shown, unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall

become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided.

7. Every such society shall have the power to make a constitution and by-laws for the government thereof, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and by-laws, and shall have such other powers as are necessary and incidental to the carrying into effect of the objects and purposes of the society.

Added by L. 1911, chap. 198.

See § 6, ante. Fees of superintendent for filing papers.

See § 10, ante. Certificate of attorney-general.

See § 11, ante. Examination by superintendent as to payment of capital, etc.

See § 4, General Corporation Law, chap. 28 of 1909, as to qualifications of incorporators.

See chap. 733 of 1900. Reincorporation of foreign moneyed corporations.

A fraternal beneficiary society incorporated under the laws of a foreign state and conducting a life insurance business on the co-operative or assessment plan, and requiring by its constitution and by-laws applicants for membership to pass a medical examination upon the result of which admission depends, is a life insurance company or association within the meaning of the question "Have you ever been rejected by any life insurance company or association?" and where an applicant for admission to one division or tent of such society, who had previously been rejected by another division or tent of the same society upon medical examination, which objection was known to him, answered "no" to such question, the answer is untruthful and fraudulent and avoids the certificate of insurance issued to such applicant, where he stipulated in his application therefor that any untruthful or fraudulent answers should vitiate the certificate and forfeit all payments made thereon. *Alden v. Knights of Maccabees*, 178 N. Y., 535.

A corporation organized under this section has no power to receive, as members, infants of such tender years that they are unable to exercise any choice in becoming members or to exercise the powers with which members are invested. *Matter of G. M. B. Assn.*, 135 N. Y., 280.

An insurance corporation organized under any article may properly change its name by a compliance with Title X of Chapter XVII of the Code of Civil Procedure. *Attorney-General Rep.*, Aug. 6, 1903.

A fraternal beneficiary society upon reinsurance of its risks and loss of all its members is not dissolved, and may either apply for leave to renew its

business or transfer its franchise to others; a corporation is an artificial creature created by the state, and only the state can destroy it. Attorney-General Rep., Nov. 4, 1910.

The certificate of the fraternal beneficiary society providing that the member himself may withdraw a certain sum in case of the death of his wife is double insurance; the intendment of the statute is to limit cases of sickness, etc., in which there may be payment of benefits to cases of either disability or death of the member. Attorney-General Rep., Nov. 10, 1903.

Collections for beneficiary claims, arising from sickness, disability or death, cannot be used for expenses. Notice of assessment may include both, but must divide the sums so applied. Attorney-General Rep., Aug. 3, 1896.

Section 58 of the Insurance Law, requiring policies of insurance to contain the entire contract, does not apply to fraternal beneficiary orders, operating under Article VII. Such societies do not issue "policies," but "membership certificates." Attorney-General Rep., Feb. 13, 1908.

An assessment fraternal beneficiary society has no power to make a by-law agreeing to lend money or to otherwise pay a benefit to a member except in the event of sickness, disability or death. Attorney-General Rep., April 23, 1908.

Fraternal beneficiary societies are not required to issue certificates of membership to those persons who join. Attorney-General Rep., May 28, 1908.

§ 235. Existing corporations and reincorporation.

Any such society now engaged in transacting business in this state may exercise, after the adoption of this article, all of the rights conferred thereby, including the powers specified in subsection seven of section two hundred and thirty-four of this chapter and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation — if incorporated — not inconsistent with this article; or, if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time, in the manner provided therein or in its constitution and laws, and all such amendments shall be filed with the superintendent of insurance and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws.

Added by L. 1911, chap. 198.

See § 37, ante. Effect of Insurance Law on corporations previously incorporated.

See § 52, ante. Reorganization of existing corporations and amendments of certificates.

See § 100, Statutory Construction Law, chap. 27 of 1909, as to effect or repeal and re-enactment of existing statutes.

Section 232 of the Insurance Law, as enacted in 1911, does not require the issuance of certificates of membership by fraternal benefit societies. Attorney-General Rep., April 19, 1912.

§ 236. Mergers.

No domestic society shall merge with or accept, by contract of reinsurance or otherwise, the transfer of substantially the entire membership or funds of any other society, unless such merger, reinsurance or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of the same, and filed with the superintendent of insurance of this state, together with a sworn statement of the financial condition of each of said societies, made by the respective presidents and secretaries, or corresponding officers together with a certificate of such officers, duly verified under oath, that such merger, reinsurance or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies. Upon the submission of said contract, financial statements and certificates, the superintendent of insurance shall examine the same and if he shall find such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger, reinsurance or transfer is just and equitable to the members of each of said societies, he shall approve the same, issue his certificate to that effect and, thereupon, the said contract of merger, reinsurance or transfer shall be of full force and effect; provided that no such merger, reinsurance or transfer proposed by two societies not incorporated in the same state shall go into effect until it is approved by the insurance commissioner, or corresponding officer, of each state incorporating the societies involved in the proposed transaction, and their joint certificate of approval of the contract therefor is issued.

Added by L. 1911, chap. 198.

§ 237. Foreign Societies.

1. Foreign societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the adoption of this article, and the authority of such societies may thereafter be renewed annually, to terminate in all cases on the first day of the succeeding April; provided, however, that the license shall continue in full force and effect until the new license shall be issued or be specifically refused. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society, within the meaning of this article.

2. No foreign society now transacting business, organized prior to the adoption of this article, which is not now authorized to transact business in this state, shall transact any business herein without a license from the superintendent of insurance. Any such society may be licensed to transact business within this state, upon filing with such superintendent a duly certified copy of its charter or articles of association, a copy of its constitution and laws, certified by its secretary or corresponding officer, a power of attorney to such superintendent as hereinafter provided, a statement of its business, under oath of its president and secretary or corresponding officers, in the form required by the superintendent, and duly verified by an examination made by the supervising insurance official of its home state or any other state satisfactory to the superintendent of insurance of this state, a certificate from the proper official in its home state, province or country that the society is legally organized, a copy of its contract — which must show that benefits are provided for by periodical or other payments by persons holding similar contracts — and upon furnishing the superintendent such other information as he may deem necessary to a proper exhibit of its business and plan of working. Upon compliance with these requirements, such foreign society shall, subject to the provisions of section nine of this chapter, be entitled to do business in this state until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this article, be renewed annually, to terminate in all cases on the first day of the succeeding

April; provided however, that such license shall continue in full force and effect until the new license shall be issued or be specifically refused. Any foreign society desiring admission to this state must have the qualifications required of domestic societies organized under this article, and have its assets invested as required by the laws of the state, territory, district, country or province wherein it is organized. When the superintendent refuses to license any society, or revokes its authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall, upon request, furnish a copy thereof, together with a statement of his reasons, to the officers of the society, and such action of the superintendent shall be reviewable by proper proceedings in any court of competent jurisdiction within the state; provided, however, that nothing contained in this or the preceding paragraph shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business herein.

3. Every foreign society now transacting business in this state shall, within thirty days after the adoption of this article, and every such society hereafter applying for admission shall, before being licensed, appoint in writing the superintendent of insurance to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such appointment, certified by said superintendent of insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as would the original. Such service may be made upon such attorney, or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society; provided, however, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than twenty days from the date of such service of such process. When legal process against any such

society is served upon said superintendent of insurance, he shall forthwith forward by registered mail one of the duplicate copies thereof, prepaid, directed to its secretary or corresponding officer.

Added by L. 1911, chap. 198.

Amended by L. 1914, chap. 106. In effect April 3, 1914.

The purpose of the amendment of this section by chap. 106 of 1914 was to add the last part of the next to the last sentence, "provided, however, that no such service * * * of such service of such process." Ed.

The superintendent of insurance may examine a company before granting a certificate to ascertain whether the proposed organization has or has not complied with the law; the insurance department has jurisdiction of all matters relating to the organization of this class of corporations and of the companies when organized. Attorney-General Rep., Jan. 11, 1893.

§ 238. Place of meeting and liability of officers.

1. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state. But its principal office shall be located in this state.

2. Officers and members of the supreme, grand or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws.

The legislative intent in the enactment of §§ 212 and 238 of the Insurance Law, to place co-operative and assessment insurance in a class by itself, was to relieve such insurance from the operation of § 52 of the Domestic Relations Law making insurance money realized by a wife on the life of her husband subject to his debts, where the annual premium paid out of his property exceeds \$500. *Dominick v. Stern*, 79 Misc., 271.

Added by L. 1911, chap. 198.

§ 239. Limitation upon power to waive provisions of the society's laws.

The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members, shall have the power or authority to waive any of the provisions thereof, and the same shall be binding upon the society and each and every member thereof and on all beneficiaries of members.

Added by L. 1911, chap. 198.

§ 240. Exemption from execution.

No money or other benefit, charity, relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment or other process, or to be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment.

Added by L. 1911, chap. 198

§ 241. Amendments to constitution and laws.

Every society transacting business under this article shall file with the superintendent of insurance a duly certified copy of all amendments of or additions to its constitution and laws, within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

Added by L. 1911, chap. 198.

§ 242. Reports and valuations.

1. Every society transacting business in this state shall, annually, on or before the first day of March, file with the superintendent of insurance, in such form as he may require, a statement under oath of its president and secretary, or corresponding officers, of its condition and standing on the thirty-first day of December last preceding, and of its transactions for the year ending on that date, and shall also furnish such other information as the superintendent may deem necessary to a proper exhibit of its business and plan of working. Such superintendent may at other times require any further statement he may deem necessary to be made relating to such society.

2. In addition to the annual report herein required, each society shall report, annually, to the superintendent a valuation of its certificates in force on December thirty-first last preceding, excluding those issued within the year for which the report is filed, in cases where the contributions for the first year, in whole or in

part, are used for current mortality and expenses; provided the first report of valuation shall be made as of December thirty-first, nineteen hundred and twelve. Such report of valuation shall show, as contingent liabilities, the present midyear value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and, as contingent assets, the present midyear value of the future net contributions provided in the constitution and laws as the same are in practice actually collected, not including therein any value for the right to make extra assessments. Provided that any excess of the present value of future contributions over the present value of promised benefits under certificates providing for disability benefits (other than total permanent disability in combination with death benefits) shall not be allowed in reduction of the liability under other forms of certificates. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation, hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

3. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the superintendent within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except those for disability benefits, shall be the National Fraternal Congress table of mortality, as adopted by the National Fraternal Congress, August twenty-third, eighteen hundred and ninety-nine, or, at the option of the society, any higher table, or it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives, with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund

separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided that, where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experience, and, in such case, a separation of the funds shall not be required. The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, except as provided in subsection five of this section, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

4. Beginning with the year nineteen hundred and fourteen, a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member thereof not later than June first of each year, or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same be mailed to each such beneficiary member. The laws of such society shall provide that, if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full and to provide for the creation and maintenance of the funds required by its laws, or found necessary otherwise, additional contributions, or additional increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of a member his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum.

5. If the valuation of the certificates, as hereinbefore provided, on December thirty-first, nineteen hundred and seventeen, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of deficiency as shown in the

valuation as of December thirty-first, nineteen hundred and seventeen. If, at any succeeding triennial valuation, such society does not show at least the same condition the superintendent shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the said condition required herein, the superintendent may, in the absence of good cause shown for such failure, institute proceedings for the liquidation and dissolution of such society, in accordance with the provisions of section sixty-three of this chapter, or, in the case of a foreign society, he may cancel its license to transact business in this state; provided that nothing contained in section sixty-three of this chapter shall be construed to authorize, prior to December thirty-first, nineteen hundred and seventeen, any application for the possession or liquidation of any society organized or transacting business pursuant to the provisions of this article by reason of the fact that the condition of such society is found, after examination, to be such that it could not meet the requirements for incorporation and authorization specified in this article.

6. Any such society shown by any triennial valuation, subsequent to December thirty-first, nineteen hundred and seventeen, not to have maintained the condition herein required shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December thirty-first, nineteen hundred and seventeen, or, thereafter, as to all new members admitted, be subject, so far as stated rates of contribution are concerned, to the provisions of section two hundred and thirty-four of this article applicable to the organization of new societies; provided that the net mortuary and beneficiary contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class, and their certificates valued, in respect to contributions and funds, as an independent society.

7. In lieu of the foregoing requirements, any society may accept in its laws the following provisions and may value its certificates on a basis, herein designated "accumulation basis," by crediting each member with the net amount contributed for

each year and with interest at approximately the net rate earned, and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this state, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contributions especially created or required for such purpose.

Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society.

Certificates issued, rerated or readjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumptions for mortality and interest recognized by the law of this state may be valued on such basis, herein designated the "Tabular basis;" provided that if on the first valuation under this section, a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve; or from increased contributions or by an increase in the number of assessments applied to the society as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws.

If the laws of the society so provide, the assets, representing the reserves of any separate class of members may be carried sepa-

rately for such class as if in an independent society, and required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life or other plan of insurance specified in the contract, according to assumptions for mortality and interest recognized by the law of this state and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July first of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis.

For this purpose individual bookkeeping accounts for each member shall not be required and all calculations may be made by actuarial methods.

Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis and the reserves on the tabular basis as any society may provide by or pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than the manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society.

Added by L. 1911, chap. 198.

Amended by L. 1913, chap. 410, and L. 1914, chap. 203. In effect April 7, 1914.

The purpose of the amendment of subdivision 2 of this section by chapter 203 of 1914, was to provide that any excess of the present value of future contributions over the present value of promised benefits under certificates providing for disability benefits (other than total permanent disability in combination with death benefits) should not be allowed in reduction of the liability under other forms of certificates; and to terminate the limitation in the law of 1913, authorizing the organization of certain voluntary associations.

§ 243. Examinations.

1. The superintendent of insurance, or any deputy, examiner or other person whom he shall appoint, shall have the power of

visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may so appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon, qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society.

2. The superintendent of insurance, or any deputy, examiner or other person whom he shall appoint, may examine any foreign society transacting, or applying for admission to transact business in this state. The said superintendent may employ assistants, and he or any person so appointed shall have free access to all the books, papers and documents that relate to the business of the society, and may summon, qualify as witnesses under oath and examine its officers, agents and employees or other persons in relation to the affairs, transactions and condition of the society. Such superintendent may, in his discretion, accept, in lieu of said examination, the examination of the insurance department of the state, territory, district, province or country wherein such society is organized. If any such society or its officers refuse to submit to such examination or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or its license refused until satisfactory evidence is furnished the superintendent as to the condition and affairs of the society, and during such suspension, the society shall not write new business in this state.

3. Except for the purpose of instituting proceedings under section sixty-three of this chapter, pending, during or after an examination or investigation of any such society, either domestic or foreign, the superintendent of insurance shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society, until a copy thereof shall have been mailed to such society, at its home office, nor until such society shall have been afforded a reasonable op-

portunity to answer any such financial statement, report or finding and to make such showing in connection therewith as it may desire.

Added by L. 1911, chap. 198

§ 244. Revocation of license.

When, upon investigation, the superintendent of insurance is satisfied that any foreign society transacting business under this article has exceeded its powers, or has failed to comply with any provisions of this article, or is conducting business fraudulently or in a way hazardous to its members, creditors or the public, or is not carrying out its contracts in good faith, he shall notify the society of his findings, stating in writing the grounds of his dissatisfaction, and, after reasonable notice, require said society, on a date named, to show cause why its license should not be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of the said superintendent, or if the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state.

Added by L. 1911, chap. 198.

§ 245. Exemption of certain societies.

Nothing contained in this article shall be so construed as to affect or apply to grand or subordinate lodges of Masons, Odd Fellows, Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias), the New York City Police Endowment Association and the Lieutenants' Benevolent Association, or to similar societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges, or to

(a) Orders, societies or associations which limit their admission to membership to any one hazardous occupation;

(b) Domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars or disability benefits of not more than

three hundred and fifty dollars to any one person in any one year or both;

(c) Domestic societies or associations of a purely religious, charitable and benevolent description, which provide for a death benefit of not more than four hundred dollars or for disability benefits of not more than three hundred and fifty dollars to any one person in any one year, or both.

Provided, however, that any such society or association described in subdivisions b and c, which provides for death or disability benefits for which certificates are issued, and any such society or association included in subdivision c which has more than one thousand members, shall not be exempted from the provisions of this section or chapter, but shall comply with all the requirements thereof, and, provided further, that nothing in subdivisions (a) and (b) of subsection one of section two hundred and thirty-one of this chapter, and subsections two, three, four, five, six and seven of section two hundred and forty-two of this chapter shall affect or apply to the Independent Order Free Sons of Israel or to any corporation, society, order or voluntary association, which was, prior to the first day of March, nineteen hundred and eleven, organized and doing business in this state on the lodge system, as provided in subsection two of section two hundred and thirty of this chapter which does not issue death benefit certificates in a sum exceeding five hundred dollars to any one member and whose membership is confined and limited exclusively to persons of one particular faith.

No society which, by the provisions of this section, is exempt from the requirements of this article or chapter, except any society described in subdivision a, shall give or allow, or promise to give or allow, to any person any compensation for procuring new members.

The superintendent of insurance may require from any society or association, by examination or otherwise, such information as will enable him to determine whether such society or association is exempt from the provisions of this article or chapter.

Any fraternal benefit society heretofore organized and incorporated and operating within the definitions set forth in section two hundred and thirty of this article providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this article and shall have all the

privileges and be subject to all the provisions and regulations of this article, except that the provisions thereof requiring medical examinations, valuations of benefit certificates, and that the certificates shall specify the amount of benefits, shall not apply to such society.

Added by L. 1911, chap. 198.

Amended by L. 1913, chap. 410; L. 1914, chap. 203, and L. 1915, chap. 476. In effect May 3, 1915.

The amendment of 1915 added "the New York City Police Endowment Association and the Lieutenants' Benevolent Association" in the first paragraph.

The purpose of the amendment of this section by chapter 203 of 1914 was to provide that any excess of the present value of future contributions over the present value of promised benefits under certificates providing for disability benefits (other than total permanent disability in combination with death benefits) should not be allowed in reduction of the liability under other forms of certificates; and to terminate the limitation in the law of 1913, authorizing the organization of certain voluntary associations.

A voluntary association of a benevolent description, having less than five hundred members, organized in this State thirteen years ago and doing business here at the time chapter 198 of 1911 went into effect, and providing for a death benefit of not more than one hundred dollars and a disability benefit of not more than one hundred and fifty dollars to any one person in any one year is exempt from the provisions of article VII of the Insurance Law. Attorney-General Rep., Oct. 31, 1911.

Membership corporations organized pursuant to the Membership Law and engaged in the business of rendering aid to members limited to the amount specified in subdivision "c" of § 245 of the Insurance Law, are prohibited from advertising the furnishing of insurance benefits generally. Attorney-General Rep., June 2, 1914.

They are not presumed to deal with the public generally, but such business is merely incident to the business of the corporations. Such corporations may issue certificates of membership to members in which there appears a description of the benefits promised for the amounts paid. Attorney-General Rep., 1914, page 83.

The right of an unauthorized foreign fraternal beneficiary society to do business in this state depends upon the question of whether said society falls within the first provisions of section 245, and that the amount of benefits paid applies only to associations of local lodges of a society now doing business in the state and to domestic lodges of a purely charitable and benevolent description. Attorney-General Rep., July 31, 1911.

§ 246. Taxation.

Every fraternal benefit society organized or licensed under this article is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every

state, county, district, municipal and school tax, other than taxes on real estate and office equipment.

Added by L. 1911, chap. 198.

§ 247. Penalties.

1. Any person, officer, member or examining physician of any society authorized to do business under this article, who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than a year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society, for the purpose of procuring payment of a benefit named in the certificate of such holder, or any person who shall willfully make any false statement in any verified report or declaration under oath, required or authorized by this article, shall be guilty of perjury and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

2. Any person who shall solicit membership for, or in any manner assist in procuring membership in, any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in, any such society not authorized as herein provided to do business as herein defined in this state, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than fifty nor more than two hundred dollars.

3. Any society, or any officer, agent or employee thereof, neglecting or refusing to comply with or violating any of the provisions of this article, the penalty for which neglect, refusal or violation is not specified in this section, shall, upon conviction thereof, be fined not exceeding two hundred dollars.

Added by L. 1911, chap. 198.

§ 248. Application of other sections of this chapter.

Sections six, seven, nine, ten, thirty-five, thirty-six, forty-seven and sixty-three of this chapter are hereby made specifically applicable to any corporation, society, order or voluntary association described in, and transacting or seeking authority to transact the business of insurance in this state authorized by, the provisions of article seven of this chapter.

Added by L. 1911, chap. 198.

§ 249. Review.

All decisions and findings of the superintendent of insurance made under the provisions of this article and all other sections of this chapter made applicable thereto may be reviewed by proper proceedings in any court of competent jurisdiction.

Added by L. 1911, chap. 198.

ARTICLE VIII.

CORPORATIONS FOR INSURANCE OF DOMESTIC ANIMALS.

SECTION 250. Incorporation.

251. Annual meeting; election of directors.

252. Annual report.

253. Examinations; when corporation may be restrained from doing business.

254. Assessments.

SECTION 250. Incorporation.

Nine or more persons may become a corporation for the purpose of insuring the lives of domestic animals, upon the co-operative or assessment plan of insurance, by making, acknowledging and filing in the office of the superintendent of insurance, a declaration stating their intention to form such corporation; the name by which it shall be known; the place where its office shall be located within this state; its particular business and objects; its duration, not to exceed thirty years; the number of its directors, not less than five nor more than thirteen, who shall manage its affairs, and the names and post-office addresses of the directors for the first year of its existence, with a sworn statement by two or more of such persons, that at least fifty persons eligible to membership have applied in good faith, in writing, for membership and insurance in such corporation, to the amount of at least ten thousand dollars, and have severally in good faith paid in in cash the regular premiums therefor, and admission or membership fees in accordance with the by-laws of such corporation. If the requirements of this chapter have been complied with, the superintendent shall file such declaration, statement and certificate, and cause the same to be recorded in a book to be kept for that purpose, and shall deliver to such corporation a certified copy of the papers so filed and recorded, with his license to the corporation to engage in the business proposed in such declaration. Upon such certified copy and license being filed in the office of the clerk of the county where the corporation is to be located, such persons and those that may thereafter be associated

with them, or their successors, shall be a corporation and authorized to commence and carry on such business. Provided, however, that no such corporation shall be formed, and no such license shall be issued by the superintendent of insurance after July first, nineteen hundred and ten.

Source.—Former § 250; originally revised from L. 1889, chap. 454, §§ 1-3.

Amended by chapter 318 of 1910.

Section 3 of chapter 318 of 1910 provides:

§ 3. This act shall take effect immediately, provided that at any time after the passage and approval of this act, and upon July first, nineteen hundred and ten, the superintendent of insurance may refuse to issue any license under section two hundred and fifty of said chapter, if in his judgment such refusal will promote the interest of the people of the state.

See § 6, ante. Fees to superintendent for filing papers.

See § 9, ante. Certificate of authorization by superintendent.

See § 10, ante. Certificate of attorney-general, corporate names, number of directors.

See § 11, ante. Examination by superintendent as to payment of capital stock, etc.

See § 60 et seq., General Corporation Law. Proceedings to change the name of a corporation.

See § 195, Penal Law. Misconduct of agents of corporations to insure domestic animals.

See chap. 733 of 1900. Reincorporation of foreign money corporations.

DIRECTORS.—A quorum of directors must be a majority of all the directors unless otherwise provided in charter or special law. By-laws cannot change this rule. Attorney-General Rep., 1900, page 253.

ACKNOWLEDGMENT.—The certificate of organization of co-operative insurance companies must be acknowledged by nine or more incorporators. Attorney-General Rep., 1892, page 442.

TRANSFER OF CORPORATE RIGHTS.—There is no provision in the Insurance Law which warrants the transfer of corporate rights and franchises to an individual acting as general agent in another state. Attorney-General Rep., 1896, page 276.

ANIMALS LOST BY FIRE.—A co-operative live stock insurance company organized under article VIII of the Insurance Law is liable for the death of an animal which results from a fire. *O'Grady v. N. Y. Mut. Live Stock Ins. Co.*, 16 App. Div., 567; 44 N. Y. Supp., 946.

DOMESTIC ANIMALS.—A corporation authorized to insure the lives of domestic animals may insure the lives of such animals in transportation over the Atlantic ocean, but has no right to transfer such a policy. Attorney-General Rep., 1897, page 114.

Fire insurance companies cannot be incorporated under article VIII, but can under article IX, to insure against loss of domestic animals by fire. Attorney-General Rep., 1893, page 317.

§ 251. Annual meeting; election of directors.

Every such corporation shall hold within the county in which its office is located, a stated annual meeting of its members in such manner and subject to such regulations as its constitution or by-laws may provide. Notice of such meeting of not less than five days shall be given in such manner as the by-laws may direct. The directors named in such declaration shall hold their office for one year and until others are elected and qualified, and directors shall be annually elected at such stated meeting. The directors shall choose from their number a president and secretary, and shall appoint such other officers as their by-laws shall prescribe. At the stated annual meeting, a majority of the persons entitled to vote thereat shall not be necessary to a quorum, and if the meeting shall not be held on the day designated therefor, it may be held on a subsequent day, in such manner as may be directed by the by-laws.

Source.—Former § 251; originally revised from L. 1889, chap. 454, §§ 4, 10.

See § 11, subd. 5, General Corporation Law, chap. 28 of 1909. Powers of corporation to pass by-laws; election of directors.

§ 252. Annual report.

Every such corporation shall annually, on or before March first, make and file with the superintendent of insurance a report for the year ending on the thirty-first day of December immediately preceding, verified by the duly authorized officers of such corporation, which shall state the date of its organization, the number of certificates or policies issued during the year or members admitted, the number of losses paid and the amount paid on each loss, the amount received from each assessment for the year, the number of claims for which assessments have been made, the total amount received for benefit fund and the disposition thereof, the reserve fund, if any, and its amount, the number of policies or memberships lapsed during the year, the number in force at the beginning and the end of the year. No other report, and no deposit of securities with the superintendent, shall be required of the corporation. Any corporation refusing or neglecting to make such report, or to make payment of any fees required by law, may, upon the suit of the attorney-general, upon the recommenda-

tion of the superintendent of insurance, be enjoined by the supreme court from carrying on any business until such report and payment shall be made and the costs of such action be paid.

Source.—Former § 252; originally revised from L. 1889, chap. 454, §§ 6, 7.

See § 1508 of Penal Law. Failure of officers of companies to insure domestic animals to make report, etc.

§ 253. Examinations; when corporation may be restrained from doing business.

Every such corporation, together with its books, papers and vouchers, shall be subject to visitation and inspection by the superintendent of insurance, or such person as he may designate. When on investigation, the superintendent shall be satisfied that any such corporation has exceeded its powers, failed to comply with any provision of 'aw, or is conducting business fraudulently, he shall report the facts to the attorney-general; who, if he shall be of the opinion that the facts require such action, must thereupon apply to the supreme court at a special term thereof within the judicial district within which the office of such corporation is located for an order requiring its officers to show cause at a time and place within the district to be specified in the order why it should not be restrained from continuing to transact business, and the court may adjourn the hearing thereof from time to time not exceeding sixty days in all.

Upon the return of such order the corporation may be heard and shall be entitled to a trial by jury of the facts stated in the report, if the same shall be traversed and the corporation shall demand a trial by jury, and to examine papers and witnesses under oath in the usual mode of trials of actions. If the facts thus reported shall be established by the finding of the court or verdict of the jury, the court may thereupon make its order or decree closing the business of the corporation and appointing a receiver for the distribution of its assets among its members, certificate holders, policy holders and creditors, or may make such other order as the interests of the corporation and the public may require.

Pending such trial the court may, upon the motion of the attorney-general, grant an injunction order restraining the corporation

and its directors or other officers from collecting any debt or demand, and from paying out or in any other way transferring or delivering to any person any money or property of the corporation during the pendency of such proceeding, except by the order of the court; and may appoint one or more temporary receivers of the property of the corporation, with all the powers of such receivers; but no action shall be maintained to restrain or dissolve any such corporation except by the attorney-general, in the name and in behalf of the people.

Source.—Former § 253; originally revised from L. 1889, chap. 454, § 8.

§ 254. Assessments.

Each notice of assessment made by any such corporation upon its members, or any of them, shall truly state the cause and purposes of such assessment and the amount paid on the last loss claim paid, the maximum face value of the policy or certificate upon which such claim was paid, and if not paid in full, the reason therefor. The manner and mode of making such assessments and the cost, expense and collection thereof shall be regulated by the by-laws of the corporation.

Source.—Former § 254; originally revised from L. 1889, chap. 454, § 11.

ARTICLE IX.

CO-OPERATIVE FIRE INSURANCE CORPORATIONS.

SECTION 260. Existing corporations continued.

- 261. Voluntary associations continued and incorporated.
- 262. Co-operative fire insurance corporations; general provisions.
- 263. Incorporation and certificate of authority.
- 264. By-laws.
- 265. Policies.
- 266. General provisions affecting assessment corporations only.
- 267. General provisions affecting advance premium corporations only.
- 268. Application of other sections of this chapter.
- 269. Extension of corporate existence.

SECTION 260. Existing corporations continued.

All corporations formed pursuant to chapter seven hundred and thirty-nine of the laws of eighteen hundred and fifty-seven, chapter five hundred and seventy-three of the laws of eighteen hundred and eighty-six or the laws of which the last mentioned chapter was a consolidation, and article nine of chapter six hundred and ninety of the laws of eighteen hundred and ninety-two, and the acts amendatory of any thereof, and all co-operative fire insurance corporations organized under special acts of the legislature which may desire to become subject to the provisions of this article and which have heretofore filed or shall hereafter file with the superintendent of insurance the papers specified in this section, are hereby continued in existence and made subject to the provisions of this article and not to any other provisions of this chapter, unless made specifically applicable thereto. Each such corporation shall, unless it has already filed with the superintendent of insurance the papers hereinafter provided, file with the superintendent of insurance, not later than December thirty-first, nineteen hundred and eleven, copies of its certificate of incorporation, or if organized under a special act, copies of its incorporating act and by-laws in force at the time of such filing, duly verified by its president and secretary by affidavits to the effect that the same are true copies. When it shall be made to appear to the satisfaction of the superintendent of insurance that the certificate of incorporation of any such corporation has been lost or destroyed

and that a copy thereof cannot be filed as hereinabove provided, the superintendent of insurance may permit the filing, in lieu of such certificate of incorporation, of a statement, verified by the oath of its president and secretary, which shall set forth the facts preventing the filing of a copy of such certificate of incorporation and show the character and mode of transacting business employed by such corporation. On the filing of such papers, so verified, the superintendent of insurance, if in his judgment such corporation will safely conduct the business of insurance in this state, shall issue to such corporation a certificate authorizing it to continue in the business of insurance in this state of the kind specified in such by-laws and within the territory in which it does business at the time of such filing, provided that such business and territory are not in conflict or inconsistent with the terms of this article; provided, further, that any such corporation which has not yet received a certificate of authority as hereinabove provided is hereby authorized to continue the business previously conducted by it to and until December thirty-first, nineteen hundred and eleven, but no such corporation shall continue such business without such certificate after December thirty-first, nineteen hundred and eleven; and provided further, that the policies of any such corporation issued heretofore or at any time prior to the issue of said certificate shall be as valid and the rights and powers of the officers and members of such corporation shall be the same in all respects as if such corporation had been originally organized under this article. All acts of the superintendent of insurance since the first day of September, nineteen hundred and ten, in issuing certificates of authority to co-operative fire insurance corporations to which the provisions of this article are applicable are hereby validated, legalized and confirmed and all corporations which have received such certificates are hereby made and declared to be legal corporations and subject to the provisions of this article, notwithstanding any irregularity, informality or defect in the certificates of incorporation or other papers filed, upon which such certificates of authority were issued.

Added by L. 1910, chap. 328, and amended by L. 1911, chap. 323.

A co-operative fire insurance company may not, prior to the issue of the certificate mentioned in § 260, extend its business immediately, upon filing the

statement mentioned in § 262, as amended by L. 1910, chap. 328. Attorney-General Rep., Nov. 15, 1910.

The filing of copies of by-laws alone by corporation or voluntary associations is not sufficient, and there must be filed copies of the original articles of association, duly verified; co-operative companies which are unable to obtain their certificates of incorporation, (a) companies regularly organized under some statute of the state, may not reorganize under section 52 for the purpose of furnishing themselves with a charter of which to make proof to entitle them to a certificate of authority and (b) companies whose officials believe they were incorporated, but are unable to prove they are existing corporations, may not be treated as voluntary associations unless they were such when the act took effect and must furnish verified copies of their original articles of association. Attorney-General Rep., Aug. 25, 1910.

If companies organized under chap. 287, L. 1878, chap. 326, L. 1880, and chap. 573, L. 1886, are unable to file either (1) copies of the certificate of intention or (2) copy duly verified of the statement referred to in the law under which incorporated, they may obtain a certificate under section 261 of the Insurance Law only by satisfying the superintendent that they were voluntary associations which at the time the act took effect were doing business, etc., and furnishing copies of the original articles of association and by-laws in force at the time of such application, duly verified. Attorney-General Rep., Aug. 19, 1910.

§ 261. Voluntary associations continued and incorporated.

All voluntary associations which were on the first day of July, nineteen hundred and ten, doing in this state an insurance business of the kind and on a plan similar to those of the corporations specified in section two hundred and sixty of this chapter, and which may desire to become corporations authorized to do the business of insurance in this state of such kind and on such plan and to become subject to the provisions of this article, shall, not later than December thirty-first, nineteen hundred and eleven, file with the superintendent of insurance, on blanks to be furnished by him for that purpose, (a) an application for the certificate hereinafter mentioned, such application to be executed by the then officers and directors of such association, and (b) copies of the original articles of association and of the by-laws in force on the date of such application, duly verified by its president and secretary by affidavits to the effect that the same are true copies; and, thereupon, such voluntary association shall become a corporation, having the same officers and directors, and subject to such articles of association and by-laws so far as the same are not in conflict or inconsistent with the terms of this article, on the superintendent of insurance, if in his judgment it will safely con-

duct the business of insurance in this state, issuing a certificate authorizing it to continue in the business of insurance in this state of the kind specified in such by-laws and within the territory in which it does business at the time of such application, provided that such business and territory are not in conflict or inconsistent with the terms of this article, to the same effect as if such voluntary association had been formed as a corporation under section two hundred and sixty-three of this chapter; provided that the policies of any such association issued heretofore or at any time prior to the issue of such certificate shall be as valid and the rights and powers of the officers and members of such association shall be the same in all respects as if it had been originally organized as a corporation under this article.

Added by L. 1910, chap. 328, and amended by L. 1911, chap. 323.

§ 262. Co-operative fire insurance corporations; general provisions.

1. Classification of corporations. All corporations to which certificates of authority shall be issued, pursuant to sections two hundred and sixty and two hundred and sixty-one of this chapter, or which shall hereafter be given certificates on their due incorporation, pursuant to the provisions of this article, shall be known as co-operative fire insurance corporations. Co-operative fire insurance corporations may make insurances (a) on property against loss or damage by fire, lightning, wind storms, tornadoes or earthquakes, or (b) against loss or damage by larceny or loss or expense in recovering the property stolen or in apprehending the thief. Such corporations shall do business on an advance premium plan or on an assessment plan, but no such corporation shall do business on both such plans. Such corporations as charge or collect in advance the estimated cost of insurance for the full term of the policy shall be deemed to be advance premium corporations. All other co-operative fire insurance corporations shall be deemed to be assessment corporations. Advance premium corporations shall do business in not more than five adjoining counties until the amount of insurance in force exceeds one million dollars, whereupon any such corporation may be authorized to do business in any number

of adjoining counties, but such a corporation shall not be authorized or permitted to begin or to do business until or unless it shall have bona fide applications for insurance or insurance in force in the county in which its principal office is located amounting to two hundred thousand dollars. Assessment corporations shall be either town corporations, which shall do business in the town where the principal office is situated and, after the amount of insurance in force exceeds fifty thousand dollars, may be authorized to do business in any or all of the towns of a single county; or county corporations, which shall do business in the county in which the principal office is situated and, after the amount of insurance in force exceeds two hundred thousand dollars, may be authorized to do business in not more than five adjoining counties; except that such corporations as had legally extended their territories to more than five counties prior to the first day of July, nineteen hundred and ten, may continue to transact business in all of such counties; but an assessment corporation is authorized to transact business; (g) the names of the business until or unless it shall have bona fide applications for insurance or insurance in force amounting, if a town corporation, to fifty thousand dollars in the town in which its principal office is located, or, if a county corporation, to two hundred thousand dollars in the county in which its principal office is located.

2. Extension of territorial limits. Any co-operative fire insurance corporation organized under the laws of this state and subject to the provisions of this article, may extend its territory within the limits prescribed in this section by filing with the superintendent of insurance a statement, verified by the oath of its president and secretary, which must set forth: (a) the purpose for which such statement is made; (b) the name of the corporation and the town or county wherein its principal office for the transaction of business is located; (c) a copy of the resolution by the board of directors of the said corporation authorizing the making of application for leave to extend its territory; (d) the amount of insurance in force in the town or county in which its principal office is located; (e) the total amount of insurance in force; (f) the names of the towns or counties in which the corporation is authorized to transact business; (g) the names of the

towns or counties in which the corporation thereafter proposed to transact business. Upon filing such statement, so verified, the superintendent of insurance shall, if compliance with the requirements of this section for the extension of territorial limits has been shown thereby, issue a certificate to such corporation authorizing it to transact the business of insurance in the territory therein stated as the territory in which it proposes thereafter to transact business.

3. Change from town to county corporation. Any town corporation which may have extended or be entitled to extend its territory to all of the towns of a single county, as provided in this section, and which shall prove to the superintendent of insurance by filing the statement herein provided for such extension of territory that it has insurance in force amounting to at least two hundred thousand dollars, shall thereupon receive from the superintendent of insurance a certificate authorizing it to transact business in the county wherein its principal office is located and in not more than five adjoining counties, and shall thereupon become and be a county corporation and may thereafter exercise all the powers granted to county corporations by this article.

4. Limitation of business.—No corporation, subject to the provisions of this article, shall insure any buildings or property out of the limits of the territory comprised in its certificate of incorporation and the territory to which it may heretofore have been legally extended, or to which it shall hereafter be extended under the provisions of this article, except that when a member of such corporation who owns or occupies premises situate in part without such limits, has buildings or property, or pastures live stock on that part thereof lying beyond such limits, he may insure such property, buildings and their contents and such live stock with such property or buildings as lie within the territorial limits of the corporation. Co-operative fire insurance corporations shall not be formed by persons residing within and shall not do business in any city having more than six hundred thousand inhabitants.

Added by chapter 328 of 1910; as amended by L. 1911, chap. 323.

A co-operative fire insurance company may not, prior to the issue of the certificate mentioned in § 260, extend its business immediately, upon filing the

§ 263. CO-OPERATIVE FIRE INSURANCE CORPORATIONS.

statement mentioned in § 262, as amended by L. 1910, chap. 328. Attorney-General Rep., Nov. 15, 1910.

§ 263. Incorporation and certificate of authority.

Thirty or more persons residing in one town or in adjoining towns in any county, if a town corporation, or in one county or adjoining counties not exceeding five, if a county corporation or an advance premium corporation, who shall each own in good faith real estate not less than five hundred dollars in value, and collectively own in good faith insurable real estate in such towns or counties, respectively, to the value of fifty thousand dollars or over, may become a corporation, on filing with the superintendent of insurance a declaration, executed and acknowledged by each of them, stating their intention to form a co-operative fire insurance corporation for the purpose of engaging in the business of insurance, pursuant to the provisions of this article, which declaration shall state (a) whether such corporation will do business as a town, a county or an advance premium corporation, (b) the town or towns or county or counties in which it intends to do business and the town or county in which its principal office is to be located, (c) its corporate name, which shall include the word "co-operative," (d) a copy of the by-laws adopted by such persons for the regulation of the business of such corporation, (e) the names and post-office addresses of the officers and directors of such corporation for the first year, and (f) such other information as the superintendent of insurance, by general rules or on such blanks as may be furnished by him, shall require; which declaration shall show that such persons own in good faith real estate in the amount hereinbefore specified. At the time of such filing or at any time within one year thereafter, such persons, or those who have been designated as the president and the secretary of such corporation, may file with the superintendent of insurance a statement, verified by them, to the effect that applications for insurance in the amounts respectively indicated in the last preceding section as necessary before any such corporation can be authorized to begin business have been in good faith made to such corporation, such statement to give the names and addresses of such applicants and the amount of insurance applied for by each; provided, however, that, in case such corporation has declared

its intention to do business on the advance premium plan, such statement shall show that the premium, specifying the amount, has been paid in full by each such applicant. If all the requirements of law have been complied with and the superintendent is satisfied, after investigation, that such statement is true, he shall thereupon file such declaration and cause it to be recorded in his office, with the certificate of the attorney-general, in a book to be kept for that purpose, and issue to such corporation a certified copy of the papers so recorded, together with a certificate authorizing such corporation to carry on the business of insurance as indicated in such declaration.

Added by chapter 328 of 1910.

§ 264. By-laws.

The by-laws of all corporations to which a certificate of authority shall be issued, pursuant to the provisions of this article, shall include or shall be amended so as to include, substantially, the following provisions:

1. Directors and annual meeting. That the corporate powers of such corporation shall be exercised by a board of directors, who, if of a town corporation, shall not be less than five, and if a county or advance premium corporation, shall not be less than eleven; that such directors shall be divided into classes and a portion only elected each year; that they shall be elected for a term of not more than four years; that they shall choose from their number a president, secretary and such other officers as may be deemed necessary; and that, after the first year, the directors shall be chosen at an annual meeting, to be held on the second Tuesday in January in each year, unless some other day is designated in such by-laws, at which meeting each person insured shall have one vote and shall be entitled to vote by proxy under such rules and regulations as may be prescribed by the by-laws unless prohibited by such by-laws.

2. Records. That each such corporation shall keep proper books (including a policy register) in which the secretary shall enter a complete record of all of the transactions of such corporation and of its board of directors and executive committee, which books shall at all times show fully and truly the condition, affairs

and business of such corporation, and shall be open for inspection by every person insured each day from nine o'clock in the forenoon to four o'clock in the afternoon, Sundays and legal holidays excepted.

3. Assessments. That such corporation shall have the power to assess for the purposes specified in sections two hundred and sixty-six and two hundred and sixty-seven of this chapter. That, in case an assessment is made, the secretary shall, within forty-five days thereafter, notify, by written or printed notice, every person insured that such assessment has been made, specifying the amount due from such person and the time when and to whom such amount must be paid; provided that such time shall not be less than thirty nor more than sixty days from the service of such notice, which may be either personal or by mail, and, if by mail, shall be deemed complete if such notice is deposited, postage prepaid, in the post-office at the place where the principal office of the corporation is located, directed to the person insured at his last known place of residence or business. That any person insured who neglects or refuses to pay his assessment may, for such reason or for any other reason satisfactory to the board of directors or its executive committee, be excluded from such corporation and, when thus excluded, the secretary shall cancel or withdraw his policy or policies, provided that such person shall remain liable for the payment of his pro-rata share of losses and expenses incurred on or before the date of his exclusion and for the penalty herein provided, in case an action shall be brought against him. If any member of such corporation shall be excluded and the policy issued to him cancelled, the secretary shall forthwith enter such cancellation and the date thereof on the records kept in the office of the corporation, and serve notice of such cancellation on the person so excluded, as provided herein for the service of notice of assessments, provided that, in that event, the person who is thus excluded or whose policy is thus cancelled shall be entitled to the repayment of an equitable portion of the unearned paid premium on such policy. That the officers of such a corporation shall proceed to collect all assessments within thirty days after the expiration of the notice to pay the same, and that neglect or refusal

on their part so to proceed or to perform any of the duties imposed on them by this article shall render them liable, individually, for the amount lost to any person due to such neglect or refusal, and, to that end, an action may be maintained by such person against such officers to collect such amount. That an action may be brought by the corporation against any person insured therein to recover all assessments which he may neglect or refuse to pay, and, if such action is brought, there may be recovered from him both the amount so assessed, with lawful interest thereon, and, as a penalty for such neglect or refusal, fifty per centum of such assessment in addition thereto.

4. Withdrawal of members; new members. That any person insured by such corporation may withdraw therefrom at any time by giving ten days' notice in writing to the secretary and paying his share of all claims existing against such corporation and upon such withdrawing member surrendering his policy or policies.

5. That persons may be insured who reside or own property within the territory in which the corporation is authorized to do business, upon the same terms and conditions as original members and such other terms as may be prescribed in the by-laws of the corporation.

6. That nonresidents, who own property within the territory in which such corporation may do business, may be insured therein and shall have all the rights and privileges of the corporation and be accountable as are other persons insured therein, but shall not be eligible to hold office in the corporation. The by-laws of any such corporation may be amended at any time, subject to the written approval of the superintendent of insurance.

Added by chapter 328 of 1910; as amended by L. 1911, chap. 323.

§ 265. Policies.

The policies of insurance issued by any such corporation shall, if against loss or damage by fire or lightning, conform to the standard fire policy prescribed in section one hundred and twenty-one of this chapter, with such modifications therein as shall be approved in writing by the superintendent of insurance. Every policy issued by such a corporation shall indicate clearly, in words prominently displayed at the top of the first page

or across the face thereof, that such policy is issued on the co-operative plan, and shall include a provision in the body of the policy to the effect that the acceptance of it by the person insured shall bind such person to pay all assessments which may be levied thereon. Each such policy shall have printed on the back thereof a copy of the by-laws of such corporation in force at the time such policy is issued.

Added by chapter 328 of 1910.

Where a receiver is appointed of an insolvent mutual fire insurance company, the outstanding policies of said company are thereupon cancelled by operation of law and subsequent losses under such policies are not liabilities which may be enforced against the receiver. Attorney-General Rep., July 23, 1909.

§ 266. General provisions affecting assessment corporations only.

The following provisions shall affect corporations doing business on the assessment plan, pursuant to the provisions of this article:

1. Such corporations may issue policies of insurance on detached dwelling houses, barns, hop houses, cheese factories, creameries, school buildings and other buildings, and the contents of such buildings, on farm produce and other property not more hazardous and on live stock provided that no such policy shall be issued for more than seven thousand dollars on any one risk, or, if such policy is against loss or damage by reason of larceny, to the extent of not more than five hundred dollars on any one risk.

2. Every such corporation may classify the buildings or property insured therein at the time of the insurance and issue policies under different rates. Every such corporation may collect at the time of the issue of a policy such survey, policy and membership fees, or any of them, not to exceed the sum of two dollars for all of such fees, and such percentage of the amount insured, not to exceed one-tenth of one per centum of the amount insured for each year of the term of insurance, as the by-laws may provide.

3. Every such corporation may borrow, on the credit of the corporation, sufficient to pay any loss, or make an assessment upon all the property insured, pro rata, according to the classifica-

tion or according to the amount insured, as may be provided in the by-laws, sufficient to pay such loss. If it is deemed to be for the best interest of the corporation, such corporation may estimate the amount necessary to pay all losses and expenses for the current year and to supply any deficiency in the preceding year, and assess and collect the same from the members of the corporation. Each assessment shall be made pro rata upon all the property at the time insured, according to its classification or according to the amount insured. The expense and cost of collection of assessments may be regulated by the by-laws.

Added by chapter 328 of 1910; as amended by L. 1911, chap. 303.

§ 267. General provisions affecting advance premium corporations only.

The following provisions shall affect corporations doing business on the advance premium plan, pursuant to the provisions of this article.

1. Such a corporation may issue policies of insurance on dwelling houses, stores, school buildings, churches, municipal buildings and all other kinds of buildings and on household furniture and the other contents of such buildings, on farm produce and other property, and on live stock, provided that no such policy shall be issued for more than five thousand dollars on any one risk, or in excess of fifteen thousand dollars in any one block or square in the business portion of any city or village; and provided that such a corporation shall not issue a policy for more than two thousand dollars on any one risk nor aggregating more than seven thousand dollars in any one block or square in the business portion of any city or village without water protection; and provided, further, that the total amount of insurance written by any such corporation in the business section of any city or village shall not exceed one per centum of the total amount of insurance in force in such corporation.

2. The expense of management of any such corporation shall not exceed in any one calendar year thirty-five per centum of its premium income in such year; provided that any such corporation may expend in such year an additional five per centum of such income for expenses incurred in the inspection of risks and

the adjustment of losses and legal expenses connected therewith; and provided further that any expenses incurred in connection with the investment of funds, not to exceed five per centum of the income therefrom, may be defrayed from such income.

3. Every such corporation shall at all times maintain a reserve equal to eighty per centum of the unearned portion of the premiums charged to its policy holders for all policies in force from their dates of issue; provided, however, that any such corporation, which shall or may at any time appear, by any examination made, or by any annual statement filed, subsequent to the first day of January, nineteen hundred and thirteen, not to possess or hold and maintain such reserve, shall reduce any deficiency in such reserve by not less than fifteen per centum of the deficiency on or before the filing of the annual statement required by law to be made as of the thirty-first day of December next following and by further amounts of not less than fifteen per centum of such deficiency on or before the filing of the annual statements required by law to be made as of the thirty-first day of December in each and every ensuing year, until the required reserve has been accumulated. If by any examination thereafter made, or by any annual statement thereafter filed, any such corporation shall appear not to have made the percentage of improvement herein required, the superintendent of insurance may, in the absence of good cause shown why an assessment should not be made, direct such corporation to make good the entire amount of deficiency in reserve by assessment or otherwise within sixty days.

4. Such corporation shall not make any additions to its surplus after the same equals one per centum of the amount of insurance in force, provided that any such corporation having less than one million dollars of insurance in force may maintain a surplus not exceeding ten thousand dollars. Any surplus may be distributed among the members whose policies shall expire during the ensuing year, proportioned according to the classification of the risks and the premiums paid thereon, such surplus being paid in cash or applied as a rebate on the premium required to renew the insurance on the same risk; provided that no such distribution shall be made until all sums of money which

may have been advanced to the corporation pursuant to the provisions of subdivision seven of this article shall have been repaid.

5. In case any deficiency is found to exist in any such corporation, by reason of fire or other losses and expenses due and unpaid, the same shall be made good within sixty days thereafter, in case the superintendent of insurance so directs, and, in case such deficiency is not so made good, the directors shall proceed to assess the members of the corporation a sufficient sum to make good such deficiency. All assessments shall be made pro rata upon all of the property insured by the corporation at the time such assessment is made, according to its classification or according to the amount insured; the method of computing the same to be first approved by the superintendent of insurance.

6. No such corporation shall reinsure or assume the risks of any other corporation, except that any such corporation may, with the approval of the superintendent of insurance, reinsure all or any part of the outstanding risks of any other advance premium corporation in process of or contemplating liquidation, and, with the consent of the respective policyholders, may assume all or any part of the outstanding policies of any such liquidating corporation. All of the provisions of subdivision three of this section with regard to the liability of an advance premium co-operative fire insurance corporation for unearned premiums shall apply to any advance premium co-operative fire insurance corporation which shall or may reinsure or assume the policy obligations of any liquidating corporation, and the basis upon which such unearned premiums shall be calculated shall be the original premiums paid by the respective policyholders for the insurance of their property by such liquidating corporation. No such corporation shall collect any policy or survey fee, nor pay any commission to an officer or other person whose duty it is to determine the character of the risk.

7. Any director, officer or member or members of any such corporation, or any other person may advance to such corporation, any sum or sums of money deemed necessary for the purposes of its business or to enable it to comply with any requirement of the law, which said moneys and such interest thereon as may have

been agreed upon, not to exceed six per centum per annum, shall be repaid only out of the surplus earnings or profits of such corporation, and shall not form a part of the legal liabilities of the corporation or of its members and shall not be subject to repayment except as hereinabove provided.

Added by chapter 328 of 1910; as amended by L. 1911, chap. 323, and L. 1912, chap. 90.

§ 268. Application of other sections of this chapter.

Sections six, seven, nine, ten, eleven, sixteen, twenty, thirty-six, thirty-nine, forty, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty-two, fifty-three, and sixty-three of this chapter are hereby, to the extent that they are now or hereafter may be applicable to corporations authorized to engage in the business of insurance in this state, specified in section one hundred and ten of this chapter, made specifically applicable to any corporation to which a certificate of authority shall be issued, pursuant to the terms of this article.

Added by L. 1910, chap. 328.

§ 269. Extension of corporate existence.

Unless otherwise provided in its certificate of incorporation or articles of association, the corporate existence of every corporation to which a certificate of authority shall be issued, pursuant to the terms of sections two hundred and sixty and two hundred and sixty-one of this chapter, is hereby extended to the end of the twenty-fifth year from and including the year beginning the first day of January, nineteen hundred and eleven.

Added by chapter 328 of 1910.

ARTICLE X.

LLOYDS AND INTER-INSURERS.

SECTION 300. Application of article.

301. Application, examination and certificate of authority.

302. General provisions affecting Lloyds and inter-insurers licensed under the preceding section.

303. Application of other sections of this chapter.

304. General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven.

305. Provision for the admission of Lloyds and inter-insurance associations domiciled in other states.

§ 300. Application of article.

Notwithstanding the provisions of section fifty-four of this chapter, persons, partnerships or associations which, on October first, eighteen hundred and ninety-two, were lawfully and actually engaged in the business of insurance as Lloyds or inter-insurers or individual underwriters, may, after January first, nineteen hundred and eleven, continue to do the business of insurance in this state, provided that such persons, partnerships or associations shall comply with the provisions of this article, but not otherwise; and such persons, partnerships and associations as may comply with and be licensed according to sections three hundred and four and three hundred and five of this article may do such insurance business as is therein permitted. Any persons, partnerships or associations which, after January first, nineteen hundred and eleven, shall in this state engage in the business of insurance as Lloyds or inter-insurers, or represent or advertise that they are so engaged, without having been authorized so to do in accordance with the provisions of this article, and any agent, subagent, or representative of any such persons, partnerships, or associations not so authorized to do such business in this state, who shall after January first, nineteen hundred and eleven, in any way represent any such unauthorized persons, partnerships or associations, directly or indirectly, in engaging or attempting to engage in the

business of insurance in this state, shall be guilty of a misdemeanor.

Added by L. 1910, chap. 638, and amended by L. 1911, chap. 502.

Residents of New York, who have received certificates under § 137 authorizing them to write surplus lines, may place such insurance in foreign or unauthorized Lloyds without becoming liable under § 300. Attorney-General Rep., August 26, 1910.

§ 301. Application, examination and certificate of authority.

Not later than August first, nineteen hundred and ten, any persons, partnerships or associations claiming that they were lawfully and actually doing the business of insurance in this state as Lloyds or inter-insurers on October first, eighteen hundred and ninety-two, shall file with the superintendent of insurance, on blanks furnished by him for that purpose, (a) an application for a certificate authorizing the continuance of such business after January first, nineteen hundred and eleven, which application shall specify the kinds of insurance intended to be written after the last mentioned day; (b) a verified statement of the condition of such Lloyds or inter-insurers as of the first day of July, nineteen hundred and ten; (c) an agreement, executed and duly acknowledged by each and every individual underwriter or inter-insurer or his attorney-in-fact duly authorized thereto, providing in substance that personal service of a summons or other legal process in an action against any such Lloyds or inter-insurers, if made upon a person specified in such agreement and resident in the state of New York, shall be equivalent to the personal service within this state of such summons or other process on each and every of such individual underwriters or inter-insurers; and (d) such other matters as the superintendent of insurance may prescribe. Thereafter, and not later than December first, nineteen hundred and ten, the financial condition of and the methods of doing business by the persons, partnerships and associations so applying, shall be examined as provided in section thirty-nine of this chapter. Thereafter, the superintendent of insurance shall grant to such persons, partnerships and associations as shall have complied with the provisions of this article a certificate of authority to conduct the business of insurance in

this state on and after January first, nineteen hundred and eleven, which certificate shall be revocable or subject to suspension, if any of such persons, partnerships or associations fail to comply with any or all of the requirements of this chapter applicable thereto, or upon the happening of any event which on January first, nineteen hundred and eleven, would prohibit such persons, partnerships or associations from transacting business in this state as set forth in section three hundred and two. Such certificate shall indicate the kinds of insurance which may be written by such persons, partnerships or associations, provided that the same are not other than those now or which may hereafter be specified in sections one hundred and ten and one hundred and fifty of this chapter.

Added by L. 1910, chap. 638.

§ 302. General provisions affecting Lloyds and inter-insurers licensed under the preceding section.

No such persons, partnerships or associations who claim that they were lawfully and actually doing the business of insurance in this state as Lloyds or inter-insurers on October first, eighteen hundred and ninety-two, shall, after January first, nineteen hundred and eleven, engage in the business of insurance in this state as Lloyds or inter-insurers, (a) unless there shall be on file in the office of the superintendent of insurance a copy of the original articles of association, copartnership agreement or inter-insurance contract, together with all amendments thereto, accompanied by an affidavit, verified by an attorney-in-fact, to the effect that it is a true copy, and stating where the principal office of such persons, partnerships or associations so doing such business is located, the kinds of insurance in which it is engaged, or in which it lawfully claims the right to engage, the name under which business is done and the names and post-office addresses of all the underwriters, inter-insurers and attorneys-in-fact so doing business as Lloyds or inter-insurers, which affidavit shall be so verified not earlier than December fifteenth, nineteen hundred and ten; or (b) which shall change the name under which business is done, without first obtaining the written approval of the

superintendent of insurance; or (c) which shall establish branches under other or different names or titles; or (d) which shall have a name so similar to that of any other Lloyds or insurance corporation as in the opinion of the superintendent of insurance is calculated to deceive, and any existing Lloyds having such a name may be required to change same by the superintendent of insurance; or (e) which does not maintain at all times, in addition to all outstanding claims and other liabilities, a sum equal to the total unearned premiums on the policies in force, calculated on the gross sum without any deduction on any account, charged to the policyholder on each respective risk from the date of the policy; or (f) which shall not have its assets invested as prescribed by section sixteen of this chapter; or (g) unless each of the underwriters shall be worth in his own right not less than twenty thousand dollars above all liabilities, such fact to be determined by the superintendent of insurance, and in determining same he may take the signed reports of commercial agencies having upwards of one hundred thousand subscribers. No such persons, partnerships or associations shall change the location of their principal office for the transaction of business without first filing with the superintendent of insurance the affidavit of an attorney-in-fact stating where such office is to be located, and in no event shall such office be located outside the state of New York. Every change in the underwriters, inter-insurers or attorneys-in-fact, made after the filing of the affidavit previously mentioned in this article, shall be reported to the superintendent of insurance by a written verified statement of an attorney-in-fact within twenty days after the same has been made, which affidavit shall be accompanied by an agreement, executed and duly acknowledged, and binding the new underwriter or underwriters, inter-insurer or inter-insurers to the original agreement between all the underwriters or inter-insurers required to be filed by section three hundred and one of this chapter, with regard to the service of process. The underwriters' liability shall not be included in the statements or reports of such persons, partnerships or associations either as an asset or a liability and any deposit made by an underwriter with any such persons, partnerships or associations, if treated as an asset in any statement or report, shall also be charged as a liability.

Added by L. 1910, chap. 638, and amended by L. 1911, chap. 502.

§ 303. Application of other sections to this chapter.

After January first, nineteen hundred and eleven, sections six, seven, nine, sixteen, twenty, twenty-one, twenty-two, thirty-six, thirty-nine, forty, forty-four, forty-five, forty-six, forty-seven, forty-eight, forty-nine, fifty-three, sixty-three, one hundred and eighteen of this chapter are hereby, to the extent that they are now or hereafter may become applicable to corporations authorized to engage in the business of insurance in this state and specified in sections one hundred and ten and one hundred and fifty of this chapter, made specifically applicable to any persons, partnerships or associations to which this article is applicable, provided that, where any of such sections imposes a duty on or prohibits an act by or in any way refers to the officers or directors of any such corporation, such sections, when read in connection with this article, shall be deemed to mean respectively the duly authorized attorney-in-fact or attorneys-in-fact or the executive, underwriting or managing committee of such persons, partnerships or associations, and provided, further, that where any of such sections refers to a corporation, the same, when read in connection with this article, shall be deemed to mean the persons, partnerships or associations to which this article is applicable.

Added by L. 1910, chap. 638.

§ 304. General provisions affecting Lloyds and inter-insurance associations organized after July first, nineteen hundred and eleven.

On and after July first, nineteen hundred and eleven, twenty-five or more persons, partnerships or corporations which have the requisite authority by their charters may engage in the business of such insurance as is specified in sections one hundred and ten and one hundred and fifty of this chapter as Lloyds or inter-insurers upon receiving a certificate of authority from the superintendent of insurance so to do. The application for such certificate of authority shall be signed by the attorney or attorneys-in-fact of those persons desiring such certificate and must be accompanied by a declaration which must set forth, (a) the name under which the business is to be conducted, which name shall not

be so similar to any existing Lloyds, inter-insurance association or corporation as, in the opinion of the superintendent of insurance, is calculated to deceive; (b) the exact location of the principal office at which the business is to be conducted, which office must be in the state of New York; (c) the kinds of insurance intended to be written, which must be only of those permitted by this section; (d) an exact copy of the articles of association, copartnership agreement or inter-insurance contract made between such underwriters or inter-insurers; (e) the names and addresses of all of the underwriters or inter-insurers so proposing to engage in such business; (f) the designation and appointment of one or more attorneys-in-fact who shall be residents of this state, with full names and addresses, upon whom a summons or other legal process can be served; (g) that a fund of at least two hundred thousand dollars has been contributed by the subscribers as a guaranty fund for policy holders and is in the possession of the attorney or attorneys-in-fact for such subscribers and is either in cash or invested in such securities as are specified in section sixteen of this chapter. Such declaration must be signed and sworn to by all of the persons, and the proper officers of the corporations so proposing to engage in the business of insurance pursuant to this section. After such documents specified shall be filed, the superintendent of insurance shall cause an examination of such Lloyds or inter-insurance association to be made, and, if he is satisfied that all of the facts alleged in the declaration are true and that the articles of association, copartnership agreement or inter-insurance contract is of such a character that the rights of the policyholders will be protected thereunder, he shall issue a certificate of authority for such Lloyds or inter-insurance association to do such business of insurance in this state as is specified in the declaration, which certificate shall be issued to such Lloyds or inter-insurance association, under the name chosen and approved, authorizing the underwriters or inter-insurers thereof to do the business permitted. Any such Lloyds and inter-insurance associations as may be thus authorized to do business in this state (1) shall at all times keep and maintain a fund of an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on the policies in force, calculated on the gross sums, without any deduc-

tion on any account, charged to the policyholder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (2) shall not change the name under which business is done without first obtaining the written approval of the superintendent of insurance; (3) shall not establish branches under other or different names or titles; (4) shall have its assets either in cash or invested as prescribed by section sixteen of this chapter; (5) shall notify the superintendent of insurance of any change in the location of its principal office for the transaction of business, which office shall always be in the state of New York, which said notice shall be in the form of a declaration subscribed and sworn to by its attorney or attorneys-in-fact; (6) shall notify the superintendent of insurance of any change in its underwriters or inter-insurers, which notice shall be in the form of a declaration subscribed and sworn to by its attorney or attorneys-in-fact; (7) shall not amend or change its articles of association, copartnership agreement or inter-insurance contract without the approval of the superintendent of insurance, and a true copy of any amendment or change permitted shall be verified by an attorney-in-fact of such Lloyds or inter-insurance associations and be filed with the superintendent of insurance; (8) shall notify the superintendent of insurance of any change in its attorney or attorneys-in-fact by filing with the superintendent of insurance an instrument revoking the designation or appointment of any attorney or attorneys-in-fact who are no longer to act for such underwriters or inter-insurers, and designating and appointing one or more attorneys-in-fact, residents of this state, with full names and addresses, who shall thereafter be the attorney or attorneys-in-fact for such underwriters or inter-insurers, such instrument to be signed and sworn to by each and every of the underwriters or inter-insurers who shall then be doing business under such authority. After any Lloyds or inter-insurance association is authorized to do business in this state, pursuant to this section, it may be joined by other and additional underwriters or inter-insurers, but in that event such underwriters or inter-insurers who may thereafter join such authorized Lloyds or inter-insurance association shall be held to be bound by the documents on file with the superintendent of insurance concerning such Lloyds or inter-

insurance association in the same manner as though they had personally signed the same, and the attorney or attorneys-in-fact then authorized by the underwriters of such Lloyds or inter-insurance association to act for them shall thereafter and subject to the provisions of this section be the attorney or attorneys-in-fact for such additional underwriters, and service of a summons or other legal process on an attorney-in-fact for the underwriters of such Lloyds or inter-insurance association whose appointment is in force and so filed with the superintendent of insurance shall be equivalent to the personal service of such process on each and every of such underwriters and interinsurers within this state. The funds required by this section to be held by any Lloyds or inter-insurance association and all other undistributed funds held by it shall be liable primarily for the payment of any losses incurred under its policies, and any judgments recovered under any such policies against the underwriters thereon may be satisfied from such funds without regard to the extent of the various underwriters' interests therein, and such funds shall not be subject to the claims of general creditors of any of the underwriters of such Lloyds or inter-insurance association, other than policyholder creditors whose claims have arisen under their policies, until all policies under which any such underwriter is obligated have been terminated, and in that event the claims of such general creditors shall not be paid from such fund or be a lien upon any part thereof beyond an amount which when paid will leave intact and in the possession of such Lloyds or inter-insurance association an amount equal to the full unearned premiums on all policies in force and in addition the sum of two hundred thousand dollars as provided herein. Any clause in any policy issued by any such Lloyds or inter-insurance association which shall contain any provision inconsistent with this section shall be void.

Added by L. 1911, chap. 502.

§ 305. Provisions for the admission of Lloyds and inter-insurance associations domiciled in other states.

On and after July first, nineteen hundred and eleven, the superintendent of insurance may in his discretion issue a certificate of authority to a Lloyds or inter-insurance association

domiciled in another state to do such insurance business in this state, for permission to do which application is made, and as may be authorized by the articles of association, partnership agreement or inter-insurance contract under which such Lloyds or inter-insurance association is operating, providing, however, that in no event shall authority be given to any such Lloyds or inter-insurance association to do other kinds of insurance business than those specified in sections one hundred and ten and one hundred and fifty of this chapter. The application for such certificate shall specify the kinds of business such Lloyds or inter-insurance association desires authority to transact within this state; it must be signed by the attorney or attorneys-in-fact for such Lloyds or inter-insurance association and must be filed with the superintendent of insurance together with, (a) a certificate from the insurance department of its home state that it has and maintains at all times an amount equal to all outstanding claims and other liabilities, plus the unearned premiums on all policies in force, calculated on the gross sums, without any deduction on any account charged to the policy holder on each respective risk from the date of the policy, and in addition the sum of two hundred thousand dollars; (b) a true copy of the articles of association, partnership agreement, or inter-insurance contract of such Lloyds or inter-insurance association, verified by its attorney or attorneys-in-fact; (c) an agreement executed by an attorney or attorneys-in-fact for such Lloyds or inter-insurance association in such form as the superintendent of insurance may prescribe that it will not do any business in this state which a domestic Lloyds or inter-insurance association cannot do; (d) a declaration and agreement duly executed and acknowledged by each of the underwriters of such Lloyds or inter-insurance association, appointing the superintendent of insurance the true and lawful attorney for such Lloyds or inter-insurance association and the underwriters thereof in and for this state, upon whom all legal process in any action or proceeding against the said Lloyds or inter-insurance association or the underwriters thereof may be served and that any service upon him shall be equivalent to the personal service within this state of such process on each and every of such underwriters or inter-insurers. If any such Lloyds or inter-insurance associa-

tion is authorized to do business in this state, and, after such authorization, other underwriters or inter-insurers desire to join in issuing policies of insurance in this state with the underwriters or inter-insurers who have filed such declaration and agreement, they are authorized to so join upon filing similar declarations and agreements with the superintendent of insurance. The certificate of authority of any such Lloyds or inter-insurance association shall be revoked by the superintendent of insurance if at any time it appears that any underwriters or inter-insurers are issuing policies of insurance within this state, under apparent authority of such certificate without filing such declaration and agreement as aforesaid, or if such Lloyds or inter-insurance association does not maintain at all times the funds specified in this section, or has violated its agreement, or the law, or is found to be in such a condition that the further transaction of business by it will be hazardous to its policyholders or its creditors or to the public.

Added by L. 1911, chap. 502.

ARTICLE 10-A.

MUTUAL AUTOMOBILE FIRE INSURANCE CORPORATIONS.

SECTION 320. Incorporation.

321. Completion of organization.

322. Directors and officers.

323. Meetings; basis of right to vote.

324. Reserves; suspension, cancellation and reinstatement of certificate; expenses.

325. Dividends.

326. Assessments.

327. Reports to and examinations by superintendent of insurance; filing of policy forms.

328. Authorization of foreign mutual automobile fire insurance corporations.

§ 320. Incorporation.

Twenty-five or more persons may become a corporation for the purpose of making insurances on the mutual plan, upon automobiles, whether stationary or being operated under their own power, and wheresoever they may be, against all or any of the hazards of fire, explosion, transportation, collision, loss by legal liability for damage to property resulting from the maintenance and use of automobiles, and loss by burglary or theft or both, including all or any of the risks of lake, river, canal, inland and ocean navigation and transportation, but not including insurance against loss by reason of bodily injury to the person. Such corporation may reinsure any risks taken by it. Incorporation may be effected by making and filing in the office of the superintendent of insurance a declaration signed by each of the incorporators, stating their intention to form a corporation for the purposes named, and setting forth a copy of the charter which they proposed to adopt, which shall state the name of the proposed corporation (which name shall include the word "mutual"), the place where its principal office is to be located, the mode and manner in which its corporate powers are to be exercised, the number of its directors, a majority of whom shall be citizens of this state, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and postoffice addresses of the directors who shall serve until the first annual meeting of such corporation, the period for the commencement and termination of its fiscal year, and such further particulars as shall be necessary to explain and make manifest the objects and purposes of the corporation. Such declaration shall be proved, or acknowledged, and recorded in a book kept for that purpose by

the superintendent of insurance, and a certified copy thereof shall be delivered to the persons executing the same. All corporations hereafter organized on the mutual plan for the exclusive purpose of making all or any of the kinds of insurance specified in this section shall be incorporated under this article.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 321. Completion of organization.

Upon receipt from the superintendent of insurance of a certified copy of the declaration of intention to form a corporation, the persons signing such declaration may open books to receive applications for membership therein. No such corporations shall issue any policies of insurance unless, and until, the persons signing such declaration shall have previously published once a week, for at least two successive weeks, a notice of their intention to form such a corporation in a public newspaper in the county where its principal office is to be located, nor until at least one thousand persons owning not less than fifteen hundred automobiles have agreed to become members of such corporation, and have applied for, and agreed to take insurance therein, covering one or more of the kinds of insurance specified in section three hundred and twenty; nor unless the annual premium cost of the insurance thus agreed to be taken shall be not less than thirty thousand dollars at the rates charged by the company, nor until the facts specified in this section have been certified under oath to the superintendent of insurance by at least three of the persons signing the original certificate and the superintendent of insurance has issued a certificate of authority to such corporation, authorizing it to begin writing the insurance specified in this article; nor until the superintendent of insurance shall be satisfied by an examination of the corporation or otherwise that the applications for membership are bona fide, which applications shall state that the applicants agree to accept and take the policies of insurance referred to therein within a period of three months from the date of the issuance to the corporation by the superintendent of insurance of a certificate of authority to transact the business of insurance specified in this article. If at any time the number of members insured shall fall below one thousand persons, and the number of cars insured falls below fifteen hundred, or if at any time the premium cost of the insurance as above determined, falls below thirty thousand dollars, no further policies shall be issued by the

corporation until other persons, who, together with existing members, amount to not less than one thousand persons, insuring not less than fifteen hundred cars, have made bona fide applications for insurance in the corporation, and until the premium cost of the insurance, as above determined shall be not less than thirty thousand dollars. In the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings for the liquidation of such corporation under section sixty-three of this chapter.

The members of the corporation shall be policy-holders therein, and when any member shall cease to be a policy-holder, he shall cease at the same time, to be a member of the corporation. A corporation, partnership, association or joint stock company may become a member of such insurance corporation, and may authorize any person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member; but neither the representative nor the said corporation, partnership, association or joint stock company shall be subject to any greater liability than as if an individual member.

Such corporation may borrow money, or assume liability in a sum sufficient to defray the reasonable expenses of its organization.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 322. Directors and officers.

Any such corporation shall have not less than thirteen directors, and such officers as shall be provided for in the certificate of incorporation or in the by-laws. By-laws may be adopted at a meeting of the directors of the corporation held after the receipt from the superintendent of insurance of a certified copy of the certificate of incorporation, and prior to the first annual meeting, provided the said by-laws shall have first been approved by the superintendent of insurance. Thereafter, by-laws may be made or amended only by the members; provided that such by-laws or amendments shall have first been approved by the superintendent of insurance. The directors shall be elected at the annual meetings of members; but at any time after the first annual meeting the directors may be divided by the board into groups, and thereafter one group only elected at each annual meeting, in a manner to be provided by the by-laws. All except four of the directors of the corporation elected after the organization of the corporation

is completed, and it is authorized to begin to issue insurance policies, must be members of the corporation. All of the officers, excepting assistant secretaries and assistant treasurers and the actuary, must be members of the board of directors.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 323. Meetings; basis of right to vote.

At all meetings of the members of the corporation, each member shall have one vote for each automobile owned and insured by him in the corporation, provided that no member shall have more than three votes.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 324. Reserves, suspension; cancellation and reinstatement of certificate; expenses.

Such corporation shall be required to maintain the same reserves for the protection of policyholders, and others who may have a right of action directly against such corporation, as are required to be maintained by stock insurance corporations in relation to the same class of insurance. The superintendent of insurance may suspend or cancel the certificate issued by him, authorizing such corporation to transact such insurance business, at any time, when the assets of such corporation are insufficient to insure and secure the payment of its policy and other obligations; and the superintendent of insurance may reinstate, or renew, said certificate whenever, by assessment, or otherwise, said assets have been increased to a sum sufficient to insure and secure the payment of the policy and other obligations of such corporation. The expenses of management of such corporation shall not exceed in any one calendar year thirty per centum of its premium income in such year, but the expenses of management shall not be held to include expenses incurred in the investigation, adjustment and settlement of claims.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 325. Dividends.

The board of directors may from time to time fix and determine, subject to the approval of the superintendent of insurance,

the amount to be declared and paid as a dividend, after retaining sufficient sums to pay all outstanding policy and other obligations.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 326. Assessments.

The corporation shall in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds but such contingent liability of a member shall not be less than an amount equal to twice the amount of, and in addition to the cash premium written in the policy. If the corporation is not possessed of cash funds above its unearned premiums sufficient for the payment of incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member if he is notified of such assessment within one year after the expiration of his policy. All proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the corporation and the contingent liability of the members thereof, shall be available for the payment of any liability of the corporation.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 327. Reports to and examinations by superintendent of insurance; filing of policy forms.

Every such corporation shall make reports to the superintendent of insurance at the same times and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

No such corporation shall issue any policy of insurance until a copy of the form thereof has been filed with the superintendent of insurance.

§ 328. Authorization of foreign mutual automobile fire insurance corporations.

After January first, nineteen hundred and nineteen, the superintendent of insurance may issue a certificate of authority to a mutual automobile fire insurance corporation organized under the laws of any other state or country, to do such insurance business in this state provided that every such foreign mutual corporation shall have the qualifications required of a domestic corporation organized under this article, and provided further, that in no event, shall authority be given to any such foreign mutual corporation organized to do other kinds of insurances than those specified in this article. Such corporations shall be subject to all the provisions of law applicable to corporations organized under this article.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

ARTICLE 10-B.

MUTUAL AUTOMOBILE CASUALTY INSURANCE CORPORATIONS.

SECTION 340. Incorporation.

- 341. Completion of organization.
- 342. Directors and officers.
- 343. Meetings; basis of right to vote.
- 344. Reserves; suspension; cancellation and reinstatement of certificates; expenses.
- 345. Dividends.
- 346. Assessments.
- 347. Reports to and examinations by superintendent of insurance; filing of policy forms.
- 348. Authorization of foreign mutual automobile casualty insurance corporations.

§ 340. Incorporation.

Twenty-five or more persons may become a corporation for the purpose of making insurances on the mutual plan upon or pertaining to automobiles, whether stationary or being operated under their own power, and wheresoever they may be, as follows:

(a) Against loss or damage resulting from accident to, or injury suffered by, any person, and for which the person insured is liable;

(b) Against loss by burglary or theft or both of such hazards;

(c) Against loss or damage to automobiles (except loss or damage by fire or while being transported in any conveyance by land or water), including loss by legal liability for damage to property resulting from the maintenance and use of automobiles; by making and filing in the office of the superintendent of insurance a certificate to be signed by each of the incorporators, stating their intention to form a corporation for the purposes named, and setting forth a copy of the charter which they propose to adopt, which shall state the name of the proposed corporation (which name shall include the word "mutual"), the place where it is to be located, the mode and manner in which its corporate powers are to be exercised, the number of its directors, a majority of whom shall be citizens and residents of this state, the manner of electing its directors and officers, the time of such elections, the manner of filling vacancies, the names and postoffice addresses of the directors who shall serve until the first annual meeting of such corporation, and such further particulars as shall be necessary to explain and make manifest the objects and purposes of the corporation. Such certificate shall be proved or acknowledged, and

recorded in a book kept for the purpose by the superintendent of insurance, and a certified copy thereof shall be delivered to the persons executing the same. Such corporation shall have power to reinsure any risks taken by it. All corporations hereafter organized on the mutual plan for the exclusive purpose of making all or any of the kinds of insurance specified in this section shall be incorporated under this article.

Added by L. 1916, chap. 14. In effect Feb. 21, 1916.

§ 341. Completion of organization.

Upon receipt of a certified copy of the certificate of incorporation from the superintendent of insurance, the persons signing such certificate may open books to receive applications for membership therein. No such corporation shall issue any policies of insurance unless, and until, the persons signing such certificate shall have published notice of their intention to form such corporation in a public newspaper in the county where its principal office is to be located, once a week for two successive weeks; nor until at least one thousand persons owning not less than fifteen hundred automobiles have agreed to become members of such corporation, and have applied for, and agreed to take, insurance therein, covering one or more of the kinds of insurance specified in section three hundred and forty; nor unless the annual premium cost of the insurance thus agreed to be taken shall be not less than fifty thousand dollars at the rates charged by the company, nor until the facts specified in this section have been certified under oath to the superintendent of insurance by at least three of the persons signing the original certificate and the superintendent of insurance has issued a certificate of authority to such corporation, authorizing it to begin writing the insurance specified in this article; nor until the superintendent of insurance shall be satisfied by an examination of the corporation or otherwise that the applications for membership are bona fide, which applications shall state that the applicants agree to accept and take the policies of insurance referred to therein within a period of three months from the date of the issuance to the corporation by the superintendent of insurance of a certificate of authority to transact the business of insurance specified in this article. If at any time the number of members insured falls below one thousand and the number of cars insured falls below fifteen hundred, or if at any time the premium cost of the insurance as above determined, falls

below fifty thousand dollars, no further policies shall be issued by the corporation until other persons, who, together with the existing members, amount to not less than one thousand persons, insuring not less than fifteen hundred cars, have made bona fide applications for insurance in the corporation; and until the premium cost of the insurance, as above determined, shall be not less than fifty thousand dollars. In the event that such applications for insurance shall not be obtained within a reasonable time, to be fixed by the superintendent of insurance, such superintendent may take the proceedings for the liquidation of such corporation under section sixty-three of this chapter.

The members of the corporation shall be policyholders therein, and when any member shall cease to be a policyholder, he shall cease at the same time to be a member of the corporation. A corporation, partnership, association or joint stock company, may become a member of such insurance corporation, and may authorize any person to represent it in such insurance corporation, and such representative shall have all the rights of any individual member; but neither the representative nor the said corporation, partnership, association or joint stock company shall be subject to any greater liability than as if an individual member.

Such corporation may borrow money, or assume liability, in a sum sufficient to defray the reasonable expenses of its organization.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

§ 342. Directors and officers.

Any such corporation shall have not less than thirteen directors, and such officers as shall be provided for in the certificate of incorporation or in the by-laws. By-laws may be adopted at a meeting of the directors of the corporation held after the receipt from the superintendent of insurance of a certified copy of the certificate of incorporation, and prior to the first annual meeting, provided the said by-laws shall have first been approved by the superintendent of insurance. Thereafter, by-laws may be made or amended only by the members; provided that such by-laws or such amendments shall have first been approved by the superintendent of insurance. The directors shall be elected at the annual meetings of members; but at any time after the first annual meeting the directors may be divided by the board, into groups, and thereafter one group only elected at each annual meeting, in a manner to be provided by the by-laws. All except four of the directors of

the corporation elected after the organization of the corporation is completed, and it is authorized to begin to issue insurance policies, must be members of the corporation. All of the officers, excepting assistant secretaries and assistant treasurers and the actuary, must be members of the board of directors.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

§ 343. Meetings; basis of right to vote.

At all meetings of the members of the corporation, each member shall have one vote for each automobile owned and insured by him in the corporation, provided that no member shall have more than three votes.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

§ 344. Reserves; suspension; cancellation and reinstatement of certificates; expenses.

Such corporation shall be required to maintain the same reserves for the protection of policyholders and others who may have a right of action directly against such corporation, as are required to be maintained by stock insurance corporations in relation to the same class of insurance. The superintendent of insurance may suspend or cancel the certificate issued by him, authorizing such corporation to transact such insurance business, at any time when the assets of such corporation are insufficient to insure and secure the payment of its policy and other obligations; and he may reinstate or renew said certificate whenever by assessment or otherwise said assets have been increased to a sum sufficient to insure and secure the payment of the policy and other obligations of such corporation. The expenses of management of any such corporation shall not exceed in any one calendar year thirty per centum of its premium income in such year, but the expenses of management shall not be held to include expenses incurred in the investigation, adjustment and settlement of claims.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

§ 345. Dividends.

The board of directors may from time to time fix and determine, subject to the approval of the superintendent of insurance,

the amount to be declared and paid as a dividend, after retaining sufficient sums to pay all outstanding policy and other obligations.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

§ 346. Assessments.

The corporation shall in its by-laws and policies fix the contingent mutual liability of the members for the payment of losses and expenses not provided for by its cash funds; but such contingent liability of a member shall not be less than an amount equal to twice the amount of, and in addition to, the cash premium written in the policy. If the corporation is not possessed of cash funds above its unearned premium sufficient for the payment of the incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses upon the members liable to assessment therefor, in proportion to their several liability. Every member shall be liable to pay and shall pay his proportionate part of any assessment which may be laid by the corporation in accordance with law and his contract, on account of losses and expenses incurred while he was a member, if he is notified of such assessment within one year after the expiration of his policy. All proposed premium assessments shall be filed in the insurance department and shall not take effect until approved by the superintendent of insurance, after such investigation as he may deem necessary. All funds of the corporation and the contingent liability of the members thereof shall be available for the payment of any liability of the corporation.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

§ 347. Reports to and examinations by superintendent of insurance; filing of policy forms.

Every such corporation shall make reports to the superintendent of insurance at the same time and in the same manner as are required from stock insurance companies transacting the same kind of business, and the superintendent of insurance may examine into the affairs of such corporation at any time, either personally or by any duly authorized examiner appointed by him, and the superintendent of insurance must make such an examination into the affairs of said corporation at least once in every two years.

No such corporation shall issue any policy of insurance until a copy of the form thereof has been filed with the superintendent of insurance.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

§ 348. Authorization of foreign mutual automobile casualty insurance corporations.

After January one, nineteen hundred and nineteen, the superintendent of insurance may issue a certificate of authority to a mutual automobile casualty insurance corporation organized under the laws of any other state or country, to do such insurance business in this state provided that every such foreign mutual corporation shall have the qualifications required of a domestic corporation organized under this article and provided further, that in no event shall authority be given to any such foreign mutual corporation organized to do other kinds of insurances than those specified in this article. Such corporation shall be subject to all the provisions of law applicable to corporations organized under this article.

Added by L. 1916, chap. 13. In effect Feb. 21, 1916.

ARTICLE 11.

LAWS REPEALED; CONSTRUCTION; WHEN TO TAKE EFFECT.

SECTION 360. Laws repealed.**361. When to take effect.****§ 360. Laws repealed.**

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

As renumbered by L. 1898, chap. 85, § 2.

§ 361. When to take effect.

This chapter shall take effect immediately.

As renumbered by L. 1898, chap. 85, § 2.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.... Part 1, chapter 20, title 21,..... All

Laws of	Chapter	Section
1814.....	49.....	All
1814.....	172.....	All
1817.....	146.....	All
1821.....	148.....	All
1824.....	277.....	All
1828.....	21.....	1, ¶¶ 168, 175, 232, 328, 419 (2d Meet.)
1829.....	336.....	All
1837.....	30.....	All
1840.....	287.....	All
1848.....	205.....	All
1849.....	178.....	All
1849.....	308.....	All
1851.....	95.....	All
1851.....	188.....	All
1852.....	71.....	All
1852.....	123.....	All
1853.....	463.....	All
1853.....	466.....	All
1853.....	528.....	All
1853.....	551.....	All
1854.....	10.....	All
1854.....	224.....	All
1854.....	369.....	All
1855.....	75.....	All
1855.....	292.....	All
1857.....	28.....	All
1857.....	38.....	All

Laws of	Chapter	Section
1857.....	469.....	All
1857.....	548.....	All
1857.....	739.....	All
1858.....	255.....	All
1858.....	285.....	All
1859.....	168.....	All
1859.....	263.....	All
1859.....	366.....	All
1860.....	153.....	All
1860.....	328.....	All
1860.....	403.....	All
1861.....	80.....	All
1861.....	92.....	All
1861.....	326.....	All
1861.....	334.....	All
1862.....	6.....	All
1862.....	300.....	All
1862.....	347.....	All
1862.....	367.....	All
1862.....	412.....	All
1863.....	242.....	All
1864.....	425.....	All
1864.....	563.....	All
1865.....	199.....	All
1865.....	328.....	All
1865.....	694.....	All
1866.....	298.....	All
1866.....	514.....	All
1866.....	525.....	All
1866.....	577.....	All
1866.....	785.....	All
1866.....	825.....	All
1866.....	828.....	All
1866.....	843.....	All

Laws of	Chapter	Section
1867.....	91.....	All
1867.....	441.....	All
1867.....	442.....	All
1867.....	574.....	All
1867.....	708.....	All
1867.....	709.....	All
1868.....	118.....	All
1868.....	318.....	All
1868.....	482.....	All
1868.....	623.....	All
1868.....	731.....	All
1868.....	732.....	All
1869.....	404.....	All
1869.....	634.....	All
1869.....	829.....	All
1869.....	902.....	All
1870.....	476.....	All
1871.....	608.....	All
1871.....	709.....	All
1871.....	888.....	All
1872.....	100.....	All
1872.....	235.....	All
1873.....	561.....	All
1873.....	593.....	All
1873.....	614.....	All
1873.....	617.....	All
1873.....	688.....	All
1873.....	849.....	All
1873.....	851.....	All
1873.....	867.....	All
1874.....	189.....	All
1874.....	331.....	All
1874.....	560.....	All
1875.....	60.....	All

Laws of	Chapter	Section
1875.....	170.....	All
1875.....	208.....	All
1875.....	423.....	All
1875.....	465.....	All
1875.....	555.....	All
1876.....	341.....	All
1876.....	357.....	All
1876.....	359.....	All
1877.....	183.....	All
1877.....	209.....	All
1877.....	211.....	All
1877.....	229.....	All
1877.....	241.....	All
1877.....	321.....	All
1877.....	423.....	All
1877.....	439.....	All
1878.....	98.....	All
1878.....	138.....	All
1878.....	282.....	All
1878.....	337.....	All
1878.....	412.....	All
1879.....	153.....	All
1879.....	161.....	All
1879.....	287.....	All
1879.....	347.....	All
1879.....	485.....	All
1879.....	489.....	All
1879.....	490.....	All
1880.....	22.....	All
1880.....	110.....	All
1880.....	168.....	All
1880.....	222.....	All
1880.....	362.....	All
1880.....	397.....	All

Laws of	Chapter	Section
1880.....	427.....	All
1880.....	428.....	All
1880.....	452.....	All
1881.....	171.....	All
1881.....	256.....	All
1881.....	305.....	All
1881.....	434.....	All
1881.....	463.....	All
1881.....	471.....	All
1881.....	484.....	All
1881.....	486.....	All
1881.....	560.....	All
1881.....	583.....	All
1881.....	600.....	All
1881.....	628.....	All
1881.....	671.....	All
1882.....	38.....	All
1882.....	218.....	All
1882.....	235.....	All
1882.....	243.....	All
1882.....	282.....	All
1882.....	312.....	All
1882.....	371.....	All
1883.....	20.....	All
1883.....	175.....	All
1883.....	455.....	All
1884.....	54.....	All
1884.....	95.....	All
1884.....	116.....	All
1884.....	132.....	All
1884.....	285.....	2, 3
1884.....	341.....	All
1884.....	345.....	All
1884.....	346.....	All

Laws of	Chapter	Section
1884.....	353.....	All
1885.....	113.....	All
1885.....	276.....	All
1885.....	327.....	All
1885.....	328.....	All
1885.....	334.....	All
1885.....	401.....	All
1885.....	416.....	All
1885.....	538.....	All
1886.....	207.....	All
1886.....	394.....	All
1886.....	436.....	All
1886.....	488.....	All
1886.....	566.....	All
1886.....	573.....	All
1886.....	604.....	All
1886.....	611.....	All
1886.....	612.....	All
1887.....	144.....	All
1887.....	167.....	All
1887.....	215.....	All
1887.....	285.....	All
1887.....	328.....	All
1887.....	429.....	All
1887.....	481.....	All
1887.....	520.....	All
1887.....	610.....	All
1887.....	650.....	All
1888.....	511.....	All
1888.....	517.....	All
1889.....	184.....	All
1889.....	203.....	All
1889.....	282.....	All
1889.....	338.....	All

Laws of	Chapter	Section
1889.....	424.....	All
1889.....	454.....	All
1889.....	520.....	All
1889.....	566.....	All
1890.....	302.....	All
1890.....	400.....	All
1890.....	401.....	All
1890.....	402.....	All
1890.....	406.....	All
1890.....	552.....	All
1891.....	80.....	All
1891.....	119.....	All
1892.....	641.....	All
1892.....	654.....	All
1892.....	690.....	All
1893.....	112.....	All
1893.....	147.....	All
1893.....	687.....	All
1893.....	690.....	All
1893.....	720.....	All
1893.....	725.....	All
1894.....	271.....	All
1894.....	399.....	All
1894.....	609.....	All
1894.....	611.....	All
1894.....	616.....	All
1894.....	684.....	All
1895.....	178.....	All
1895.....	585.....	All
1895.....	917.....	All
1895.....	995.....	All
1896.....	23.....	All
1896.....	38.....	All
1896.....	322.....	All

Laws of	Chapter	Section
1896.....	841.....	All
1896.....	844.....	All
1896.....	845.....	All
1896.....	850.....	All
1896.....	907.....	All
1897.....	29.....	All
1897.....	218.....	All
1897.....	345.....	All
1897.....	387.....	All
1897.....	448.....	All
1897.....	493.....	All
1897.....	503.....	All
1898.....	85.....	All
1898.....	140.....	All
1898.....	147.....	All
1898.....	171.....	All
1898.....	465.....	All
1898.....	654.....	All
1899.....	85.....	All
1899.....	143.....	All
1899.....	165.....	All
1899.....	166.....	All
1899.....	693.....	All
1900.....	266.....	All
1900.....	366.....	All
1900.....	641.....	All
1901.....	142.....	All
1901.....	346.....	All
1901.....	397.....	All
1901.....	513.....	All
1901.....	514.....	All
1901.....	634.....	All
1901.....	635.....	All
1901.....	677.....	All

Laws of	Chapter	Section
1901.....	722.....	All
1901.....	726.....	All
1902.....	162.....	All
1902.....	297.....	All
1902.....	437.....	All
1903.....	106.....	All
1903.....	135.....	All
1903.....	450.....	All
1903.....	471.....	All
1903.....	530.....	All
1903.....	566.....	All
1904.....	146.....	All
1904.....	451.....	All
1904.....	468.....	All
1904.....	543.....	All
1904.....	551.....	All
1904.....	708.....	All
1904.....	759.....	All
1905.....	113.....	All.
1905.....	217.....	All
1905.....	251.....	All
1905.....	566.....	All
1905.....	567.....	All
1905.....	568.....	All
1905.....	569.....	All
1905.....	573.....	All
1905.....	574.....	All
1906.....	123.....	All
1906.....	326.....	All
1906.....	354.....	All
1907.....	206.....	All
1907.....	239.....	All
1907.....	273.....	All
1907.....	285.....	All

Laws of	Chapter	Section
1907.....	388.....	All
1907.....	503.....	All
1907.....	623.....	All
1907.....	625.....	All
1907.....	714.....	All
1907.....	729.....	All
1908.....	9.....	All
1908.....	346.....	All
1908.....	347.....	All

INDEPENDENT STATUTES

RELATING TO

INSURANCE COMPANIES.

ARSON IN SECOND DEGREE.

PENAL LAW, § 222.

§ 222. Arson in second degree.

A person who:

1. Commits an act of burning in the day time, which, if committed in the night time, would be arson in the first degree; or,

2. Wilfully burns, or sets on fire, in the night time, a dwelling house, wherein, at the time, there is no human being; or,

3. Wilfully burns, or sets on fire, in the night time, a building not inhabited, but adjoining or within the curtilage of an inhabited building, in which there is, at the time, a human being, so that the inhabited building is endangered, even though it is not in fact injured by the burning; or,

4. Wilfully burns, or sets on fire, in the night time, a car, vessel, or other vehicle, or a structure or building, ordinarily occupied at night by a human being, although no person is within it at the time; or

5. Wilfully burns, or sets on fire, a vessel, car, or other vehicle, or a building, structure, or other erection, which is at the time insured against loss or damage by fire, with intent to prejudice or defraud the insurer thereof,

Is guilty of arson in the second degree.

MISCONDUCT OF OFFICERS.

PENAL LAW, § 665.

§ 665. Misconduct of directors, officers, agents and employees of corporations.

A director, officer, agent or employee of any corporation or joint-stock association who:

1. Knowingly receives or possesses himself of any of its property otherwise than in payment for a just demand, and with

intent to defraud, omits to make or to cause or direct to be made a full and true entry thereof in its books and accounts; or,

2. Makes or concurs in making any false entry, or concurs in omitting to make any material entry in its books or accounts; or,

3. Knowingly (a), concurs in making or publishing any written report, exhibit or statement of its affairs or pecuniary condition containing any material statement which is false, or (b), omits or concurs in omitting any statement required by law to be contained therein; or,

4. Having the custody or control of its books, wilfully refuses or neglects to make any proper entry in the stock book of such corporation as required by law, or to exhibit or allow the same to be inspected, and extracts to be taken therefrom by any person entitled by law to inspect the same, or take extracts therefrom; or,

5. If a notice of an application for an injunction affecting the property or business of such joint-stock association or corporation is served upon him, omits to disclose the fact of such service and the time and place of such application to the other directors, officers and managers thereof; or,

6. Refuses or neglects to make any report or statement lawfully required by a public officer,

Is guilty of a misdemeanor.

DISCRIMINATIONS AND REBATES.

PENAL LAW, § 1191.

§ 1191. Discriminations and rebates by life insurance corporations prohibited.

Any life insurance corporation or corporation transacting the business of life insurance on the co-operative or assessment plan doing business in this state, or any officer or agent thereof, who:

1. Makes any discrimination in favor of individuals of the same class or of the same expectation of life either in the amount of the premium charged or in any return of premiums, dividends or other advantages; or,

2. Makes any contract for insurance or agreement as to such contract other than that which is plainly expressed in the policy issued; or,

3. Pays or allows, or offers to pay or allow as an inducement to any person to insure, any rebate or premium, or any special favor or advantage whatever, in the dividends to accrue thereon or any inducement whatever not specified in the policy; or,

4. Makes any distinction or discrimination between white persons and colored persons, wholly or partially of African descent, as to the premiums or rates charged for policies upon the lives of such persons, or in any other manner whatever; or demands or requires a greater premium from such colored persons than is at that time required by such company from white persons of the same age, sex, general condition of health and prospect of longevity; or makes or requires any rebate, diminution or discount upon the amount to be paid on such policy in case of the death of such colored persons insured, or inserts in the policy any condition, or makes any stipulation whereby such person insured shall bind himself, or his heirs, executors, administrators and assigns to accept any sum less than the full value or amount of such policy in case of a claim accruing thereon by reason of the death of such person insured, other than such as are imposed upon white persons in similar cases, is guilty of a misdemeanor. Nothing in this section shall be construed to require any corporation doing business under articles six or seven of the insurance law, which limits and confines its business or membership to the members of a secret or fraternal order or body, to insure or accept any individual who is not a member of such secret or fraternal order or body.

Note.—This section is in effect Sept. 1, 1913.

ACTING FOR FOREIGN INSURANCE CORPORATION.

PENAL LAW, § 1199.

§ 1199. **Acting for foreign insurance corporation which has not designated superintendent of insurance as attorney.**

Any person acting for himself or for others who solicits or procures, or aids in the solicitation or procurement of policies or

certificates of insurance from, or adjusts losses or in any manner aids the transaction of any business for, any foreign insurance corporation, which has not executed and filed in the office of the superintendent of insurance, a written appointment of the superintendent to be the true and lawful attorney of such corporation in and for this state, upon whom all lawful process in any action or proceeding against the corporation may be served, is guilty of a misdemeanor.

Note.—This section is in effect Sept. 1, 1913.

REBATES.

PENAL LAW, § 1200.

§ 1200. Any person knowingly receiving any rebate or allowance or deduction from any premium, or any valuable thing, special favor or advantage whatever, as an inducement to take any policy of life insurance, not specified in the policy is guilty of a misdemeanor. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

FALSE LITERATURE.

PENAL LAW, § 1203

§ 1203. Issue or circulation of false literature.

Any insurance corporation, or any officer, director or agent thereof who shall issue or circulate or cause or permit to be issued or circulated in this state any illustration, circular or statement indicating that such corporation can transact in this state any busi-

ness of a character other than that which it is authorized to transact under the certificate of authority issued to it by the superintendent of insurance, shall be guilty of a misdemeanor, and the superintendent of insurance shall revoke the certificate of authority of the corporation or agent on a conviction for so offending.

Note.—This section takes effect Sept. 1, 1913.

PERJURY.

PENAL LAW, § 1627.

§ 1627. Contradictory statements under oath.

In any prosecution for perjury the falsity of the testimony or statement set forth in the indictment shall be presumptively established by proof that the defendant has testified, declared, deposed or certified under oath to the contrary thereof in any other written testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed.

FRANCHISE TAX ON INSURANCE CORPORATIONS.

TAX LAW, § 187.

§ 187. Franchise tax on insurance corporations.

An annual state tax for the privilege of exercising corporate franchises or for carrying on business in their corporate or organized capacity within this state equal to one per centum on the gross amount of premiums received during the preceding calendar year for business done at any time in this state, which gross amount of premiums shall include all premiums received during such preceding calendar year on all policies, certificates, renewals, policies subsequently canceled, insurance and reinsurance during such preceding calendar year, and all premiums that are received during such preceding calendar year on all policies, certificates, renewals, policies subsequently canceled, insurance and reinsurance executed, issued or delivered in all years prior to such preceding calendar year, whether such premiums were in the form of money, notes, credits or any other substitute for money, shall

be paid annually into the treasury of the state on or before the first day of June by the following corporations:

1. Every domestic insurance corporation, incorporated, organized or formed under, by or pursuant to a general or special law;

2. Every insurance corporation, incorporated, organized or formed under, by or pursuant to the laws of any other state of the United States, and doing business in this state, except a corporation doing a fire insurance business or a marine insurance business;

3. Every insurance corporation, incorporated, organized or formed under, by or pursuant to the laws of any state without the United States, or of any foreign country, except such a corporation doing a life, health or casualty insurance business, and doing business in this state; but the tax on gross premiums of a corporation so incorporated, organized or formed and doing a fire or marine insurance business within the state shall be equal to five-tenths of one per centum. This section does not apply to a fraternal beneficiary society, order or association, a corporation for the insurance of domestic animals, a town or county co-operative insurance corporation, nor to any corporation subject to the supervision of or required by or in pursuance of law to report to the superintendent of banks; but this section does apply to an individual, or partnership, or association of underwriters known as Lloyds in so far as corporations doing the same kind of insurance business are subject to its provisions. The taxes imposed by this section shall be in addition to all other fees, licenses or taxes imposed by this or any other law, except that in assessing taxes under the reciprocal provisions of section thirty-four of the insurance law, credit shall be allowed for any taxes paid under this section. The term "insurance corporation" as used in this article, shall include a corporation, association, joint-stock company or association, person, society, aggregation or partnership by whatever name known doing an insurance business in this state.

REPORTS OF CORPORATIONS.

TAX LAW, § 192.

§ 192. Reports of corporations.

Corporations liable to pay a tax under this article shall report as follows:

* * * * *

5. Insurance corporations. Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this chapter, shall, on or before March first in each year, make a written report to the comptroller of its condition at the close of its business on December thirty-first preceding, stating the gross amount of all premiums referred to in section one hundred and eighty-seven of this chapter, received during the preceding calendar year on business done thereby in this state during the year ending with such day and at all times prior thereto, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

VALUE OF STOCK TO BE APPRAISED.

TAX LAW, § 193.

§ 193. Value of stock to be appraised.

If the dividend or dividends amount to less than six per centum on the par value of the capital stock, or no dividend is declared, the president, treasurer or secretary of the company liable to pay a tax under the provisions of section one hundred and eighty-two of this chapter, shall, under oath, between the first and fifteenth days of November in each year, estimate and appraise the capital stock of such company at its actual value.

And shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the state.

FURTHER REQUIREMENTS AS TO REPORTS OF CORPORATIONS.

TAX LAW, § 194.

§ 194. Further requirements as to reports of corporations.

Every report required by this article shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint-stock company or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such forms shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

PAYMENT OF TAX AND PENALTY FOR FAILURE.

TAX LAW, § 197.

§ 197. Payment of tax and penalty for failure.

A tax imposed by section one hundred and eighty-two or one hundred and eighty-six of this chapter shall be due and payable into the state treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section one hundred and eighty-five, on elevated railroads or surface railroads not operated by steam, shall be due and payable into the state treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-seven of this chapter on an insurance corporation shall be due and payable into the state treasury on or before the first day of June in each year. A tax imposed by section one hundred and eighty-eight or one hundred and eighty-nine shall be due and payable into the state treasury on or before the first day of Septem-

ber in each year. A tax imposed by section one hundred and ninety-one of this chapter on a foreign banker shall be due and payable into the state treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint-stock company, person or partnership, liable to pay the tax, shall pay into the state treasury, in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint-stock company, person or partnership failing to make the annual report required by this article or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the state the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint-stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

PERSONAL PROPERTY NOT ALIENABLE IN CERTAIN CASES.

PERSONAL PROPERTY LAW, § 15.

§ 15. Personal property not alienable in certain cases.

1. The right of the beneficiary to enforce the performance of a trust to receive the income of personal property, and to apply it to the use of any person, cannot be transferred by assignment or otherwise. But the right and interest of the beneficiary of any other trust in personal property may be transferred. Provided, however, that when the proceeds of a life insurance policy, becoming a claim by death of the insured, are left with the insurance company under a trust or other agreement, the benefits accruing thereunder after the death of the insured shall not be

transferable, nor subject to commutation or incumbrance, nor to legal process except in an action to recover for necessities, if the parties to the trust or other agreement so agree.

REGULATION OF ACTION.

CODE CIVIL PROCEDURE, § 1761.

§ 1761. Regulation when action brought by either husband or wife.

Whenever the relation of husband and wife ceases by the entry of a judgment dissolving the marriage, the defendant guilty of adultery is not entitled to any interest in any policy of insurance on the life of the plaintiff, wherein such defendant is named as a beneficiary, and the plaintiff may apply to the court granting the final decree or to a special term of the supreme court on notice to the defendant, or the attorney who appeared for defendant in action for divorce, and to the insurance company issuing the policy or policies, for an order directing the insurance company issuing the policy or policies to substitute therein such beneficiary as the plaintiff may nominate. In case where it is shown that the defendant has contributed from his or her separate estate toward the payment of the premiums on such policy, the court shall grant such order on such terms as in the discretion of the court shall be equitable. This section shall also apply in like manner when the defendant obtains a decree against the plaintiff on a counterclaim.

Note.—This section takes effect Sept. 1, 1913.

LEGISLATIVE APPEARANCES.

LEGISLATIVE LAW.

§ 66. Every person retained or employed for compensation as counsel or agent by any person, firm, corporation or association to promote or oppose directly or indirectly the passage of bills or resolutions by either house or to promote or oppose executive

approval of such bills or resolutions, shall, in each and every year, before any service is entered upon in promoting or opposing such legislation, file in the office of the secretary of state a writing subscribed by such counsel or agent stating the name or names of the person or persons, firm or firms, corporation or corporations, association or associations, by whom or on whose behalf he is retained or employed, together with a brief description of the legislation in reference to which such service is to be rendered. No notice so filed shall be valid for more than thirty days after the adjournment of the session of the legislature held in the year in which the same is filed. It shall be the duty of the secretary of state to provide a docket to be known as the docket of legislative appearances, with appropriate blanks and indices, and to forthwith enter therein the names of the counsel and agents so retained or employed and of the persons, firms, corporations or associations retaining or employing them, together with a brief description of the legislation in reference to which the service is to be rendered, which docket shall be open to public inspection. Upon the termination of such employment the fact of such termination, with the date thereof, may be entered by direction of either such counsel or agent or of the employer. No person, firm, corporation or association shall retain or employ any person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislative measure or measures. No person shall for compensation engage in promoting or opposing legislation except upon appearance entered in accordance with the foregoing provisions of this section. And no person shall accept any such employment or render any such service for compensation contingent upon the passage or defeat of any legislative measure or measures. It shall be the duty of every person, firm, corporation or association within two months after the adjournment of the legislature to file in the office of the secretary of state an itemized statement verified by the oath of such person, or in case of a firm of a member thereof, or in case of a domestic corporation or association

of an officer thereof, or in case of a foreign corporation or association of an officer or agent thereof, showing in detail all expenses paid, incurred or promised directly or indirectly in connection with legislation pending at the last previous session, with the names of the payees and the amount paid to each, including all disbursements paid, incurred or promised to counsel or agents, and also specifying the nature of said legislation and the interest of the person, firm, corporation or association therein. The provisions, however, of this section requiring docket entries shall not apply to duly accredited counsel or agents of counties, cities, towns, villages, public boards and public institutions. And the provisions hereof shall not be construed as affecting professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation where such professional service is not otherwise connected with legislative action. Every person, every member of any firm, and every association or corporation violating any provision of this section and every person causing or participating in a violation thereof shall be guilty of a misdemeanor and, in case of an individual, shall be punishable by imprisonment in a penitentiary or county jail for not more than one year or by a fine of not more than one thousand dollars or by both, and, in case of an association or corporation, by a fine of not more than one thousand dollars. And in addition to the penalties hereinbefore imposed any corporation or association failing to file the statement of legislative expenses within the time required shall forfeit to the people of the state the sum of one hundred dollars per day for each day after the expiration of the two months within which such statement is required to be filed, to be recovered in an action to be brought by the attorney-general.

REINCORPORATION — FOREIGN MONEYED
CORPORATION.

CHAP. 733 OF 1900.

AN ACT to provide for the reincorporation under the laws of this state of foreign moneyed corporations.

BECAME a law May 2, 1900, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Any moneyed corporation duly organized by or under the laws of any state of the United States, and having an office or doing business in this state, may file, if a banking corporation or authorized to make loans upon pledges or deposits, in the office of the superintendent of the banking department, and if an insurance corporation in the office of the superintendent of the insurance department, the documents described in section two of this act, and such documents shall be recorded as original certificates of incorporation are required by law to be recorded. The fees for filing and recording such documents, together with the tax, if any, required by law to be paid before the incorporation of a domestic company of the same class, must be paid before filing.

§ 2. The documents to be filed by any such corporation shall include,

1. A copy of its charter, certificate of incorporation, or other document constituting it a body corporate, with such amendments, if any, as are desired by the corporation or are required by the laws of New York, authenticated as an original certificate of incorporation is required to be authenticated.

2. A declaration of its desire to become a corporation of this state and of its submission to the laws of this state, duly executed by the authority of the body in which its corporate powers are vested.

3. A certificate of the superintendent of that department in which these papers are filed that the charter, certificate of incorporation or other constituent document, with its proposed amendments, if any, as filed, is in all respects consistent with the laws of this state relating to domestic corporations of the same class; that the corporation applicant has complied with all conditions imposed by its laws upon domestic corporations of the same class beginning business in this state, with the exception of any provision concerning the residence of a majority of the corporators, trustees, or directors of such corporation; that its name is not the same with the name of any domestic corporation nor likely to be confounded with any such name, and that it has paid all fees and taxes due from it to the state, including the tax, if any, imposed by this state upon the original incorporation of a company of the same class.

§ 3. From the date of filing these documents the corporation shall become and be a corporation of this state, and shall be subject to all the laws of this state applicable to corporations of the same class; but its existence and powers as such corporation shall terminate if it shall fail at any time for one month to maintain an office within the state at which an authorized officer or agent shall be present at all reasonable business hours, prepared to exhibit the books of the company to the proper authorities of this state and to receive service of process; or if it shall fail within two years to terminate its corporate existence derived from any other state, by surrender of its charter or by dissolution.

§ 4. This act shall take effect immediately.

BAIL — AUTOMOBILES.

CHAP. 538 OF 1904. § 6, SUB. 3.

Sub. 3. Release from custody, bail, et cetera.

In case the owner of a motor vehicle shall be taken into custody because of a violation of any provision of this act, he shall be forthwith taken before an accessible captain or a sergeant or acting ser-

geant of police in any city or village, or any justice of the peace or magistrate, and be entitled to an immediate hearing; and if such hearing cannot then be had be released from custody on giving a bond or undertaking executed by a fidelity or surety company organized under the laws of this state and having a deposit of at least two hundred thousand dollars with the superintendent of insurance of this state, said bond or undertaking to be in an amount not exceeding the maximum fine for the offence with which the owner is charged and to be conditioned for the owner's appearance in answer for such violation, at such time and place as shall then be indicated; or on giving his personal undertaking to appear in answer for such violation, at such time and place as shall then be indicated, secured by the deposit of a sum equal to the maximum fine for the offense with which he is charged, or in lieu thereof, by leaving the motor vehicle, being operated by such person with such officer; or in case such officer is not accessible, be forthwith released from custody on giving his name and address to the officer making such arrest, and depositing with such officer a sum equal to the maximum fine for the offense for which such arrest is made, or in lieu thereof, by leaving the motor vehicle, being operated by such person, with such officer, provided, that in such case the officer making such arrest shall give a receipt in writing for such sum or vehicle and notify such person to appear before the most accessible magistrate, naming him, on that or the following day, specifying the place and hour. In case security shall be deposited, as in this subdivision provided, it shall be returned to the person depositing, forthwith on such person giving a bond or undertaking of a fidelity or surety company, as in this section provided, or on such person being admitted to bail as provided in section five hundred and fifty-four of the code of criminal procedure, and the return of any receipt or other voucher given at the time of such deposit. In case such undertaking of a fidelity or surety company be not given, or such personal undertaking with security or such deposit shall not be made by an owner so taken into custody, the provisions of section five hundred and fifty-four of the code of criminal procedure, shall apply.



GENERAL CORPORATION LAW.

CHAPTER 28 OF 1909.

CHAPTER 23 OF THE CONSOLIDATED LAWS.

- ARTICLE 1. Short title; classification; definition (§§ 1-3).
2. General provisions (§§ 4-44).
 3. Change of name (§§ 60-65).
 4. Sale of corporate real property (§§ 70-76).
 5. Judicial supervision of corporation and of the officers and members thereof (§§ 90-92).
 6. Action for sequestration, action for dissolution and action to enforce individual liability of officers and members of corporation (§§ 100-116).
 7. Action to annul corporation (§§ 130-136).
 8. Action to dissolve moneyed corporation (§§ 150-161).
 9. Proceedings for voluntary dissolution of corporation (§§ 170-179).
 10. Dissolution of stock corporation without judicial proceedings (§§ 220, 221).
 - 10a. Provisions applicable to temporary and permanent receivers of corporations (§§ 226, 227).
 11. Powers, duties and liabilities of receivers of corporation (§§ 230-278).
 12. Provisions applicable to two or more of the foregoing proceedings or actions (§§ 300-316).
 13. Alteration and repeal of charter of corporation (§§ 320, 321).
 14. Laws repealed; construction; when to take effect (§§ 330-332).

ARTICLE 1.

SHORT TITLE; CLASSIFICATION; DEFINITIONS.

- SECTION 1. Short title.
2. Classification of corporations.
 3. Definitions.

GENERAL CORPORATION LAW.

ARTICLE 2.

GENERAL PROVISIONS.

- SECTION 4. Qualifications of incorporators.
5. Filing and recording certificates of incorporation.
6. Corporate names.
7. Amended and supplemental certificates.
8. Lost or destroyed certificates.
9. Certificate and other papers as evidence; evidence of consolidation.
10. Limitation of powers; provisions of certificate.
11. Grant of general powers.
12. Enlargement of limitations upon the amount of the property of non-stock corporations.
13. Acquisition of additional real property.
14. Acquisition of property without the state.
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16. Proof to be filed before granting certificate.
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41. Effect of extension.
42. When notice of lapse of time unnecessary.
43. As to acts of directors.
44. Political contributions prohibited; penalty.

§ 1. Short title.

This chapter shall be known as the "General Corporation Law."

§ 2. Classification of corporations.

A corporation shall be either,

1. A municipal corporation,
2. A stock corporation, or
3. A non-stock corporation.

A stock corporation shall be either

1. A moneyed corporation,
2. A railroad or other transportation corporation, or
3. A business corporation.

A non-stock corporation shall be either,

1. A religious corporation,
2. A membership corporation, or
3. Any corporation other than a stock corporation.

A reference in a general law to a class of corporations described in accordance with this classification shall include all corporations theretofore formed belonging to such class.

§ 3. Definitions.

1. A "municipal corporation" includes a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government.

2. A "stock corporation" is a corporation having a capital stock divided into shares, and which is authorized by law to distribute to the holders thereof dividends or shares of the surplus profits of the corporation. A corporation is not a stock corporation because of having issued certificates called certificates of stock, but which are in fact merely certificates of membership, and which is not authorized by law to distribute to its members any dividends or share of profits arising from the operations of the corporation.

3. The term "non-stock corporation" includes every corporation other than a stock corporation.

4. A "moneyed corporation" is a corporation formed under or subject to the banking or the insurance law.

5. A "domestic corporation" is a corporation incorporated by or under the laws of the state or colony of New York. Every corporation which is not a domestic corporation is a foreign corporation, except as provided by the code of civil procedure for the purpose of construing such code.

6. The term "directors," when used in relation to corporations, shall include trustees or other persons, by whatever name known, duly appointed or designated to manage the affairs of the corporation.

7. The term "certificate of incorporation" shall include articles of association or any other written instruments required by law to be filed, to effect the incorporation of a corporation, including a certified copy of an original certificate of incorporation filed for such purpose in pursuance of law.

8. The term "member of a corporation" shall include every person having a right to vote at a meeting of the corporation for the election of directors, other than a person having a right to vote only upon a proxy.

9. The term "office of a corporation" means its principal office within the state, or principal place of business within the state if it has no principal office therein.

10. The term "business of a corporation," when used with reference to a non-stock corporation, includes the operations for the conduct of which it is incorporated.

11. The term "corporate law" or "laws," when used in any law forming a part of the consolidation of the general laws of the state of which this chapter is a part, means the general statutes of this state relating to corporations included in such consolidation.

12. The existence of an easement in real property acquired or reserved by a municipal corporation, a railroad corporation or other transportation corporation, shall not be deemed an encumbrance upon such real property under any law relating to investments in mortgages upon real property by corporations, trustees, executors, administrators, guardians or other persons holding trust

funds, but the effect of such an easement upon the real property which it affects, shall be taken into consideration in determining the value thereof.

Amended by L. 1914, chap. 128. In effect April 6, 1914.

Chap. 128 of L. 1914, adds subd. 12.

§ 4. Qualifications of incorporators.

A certificate of incorporation must be executed by natural persons, who must be of full age, and at least two-thirds of them must be citizens of the United States and one of them a resident of this state. This section shall not apply to a corporation formed by the reincorporation or consolidation of existing corporations, or to the reorganization of a corporation upon the sale of the property and franchises of a previously existing corporation or otherwise.

§ 5. Filing and recording certificates of incorporation.

1. Every certificate of incorporation and every amended or supplemental certificate, and every certificate which alters the provisions of any certificate of incorporation or any amended or supplemental certificate hereafter executed, shall be in the English language, and except as otherwise provided by law, shall be filed in the office of the secretary of state, and shall be by him duly recorded and indexed in books specially provided therefor, and a certified copy of such certificate or amended or supplemental certificate with a certificate of the secretary of state of such filing and record, or a duplicate original of such certificate or amended or supplemental certificate shall be filed and similarly recorded and indexed in the office of the clerk of the county in which the office of the corporation is to be located, or, if it be a non-stock corporation, and such county be not determined upon at the time of executing the certificate of incorporation, in such county clerk's office as the judge approving the certificate shall direct. Nothing herein contained, however, shall be deemed to prohibit a corporation from having and using a corporate name or title in a language other than the English language if the same be in English letters or characters. All taxes required by law to be paid before or upon incorporation and the fees for filing and recording such certificate must be paid before filing. No corporation shall exercise any cor-

porate powers or privileges until such taxes and fees have been paid.

2. Whenever under any law now or heretofore in force the certificate of incorporation of any corporation other than a stock corporation was or is required to be filed in more than one public office, a certified copy of such certificate so filed in any one of such public offices may be filed in such other office with the like effect as if the original had been duly filed therein, provided, however, that no rights accrued prior to the filing of such copy shall be impaired or affected thereby, provided also, that such filing of a copy shall not cause a duplication or similarity of corporate names in violation of the next succeeding section.

Amended by L. 1913, chap. 479.

§ 6. Corporate names.

1. No certificate of incorporation of a proposed corporation having the same name as a corporation authorized to do business under the laws of this state, or a name so nearly resembling it as to be calculated to deceive, shall be filed or recorded in any office for the purpose of effecting its incorporation, or of authorizing it to do business in this state; nor shall any corporation except a religious, charitable or benevolent corporation or bar association be authorized to do business in this state unless its name has such word or words, abbreviation, affix or prefix, therein or thereto, as will clearly indicate that it is a corporation as distinguished from a natural person, firm, or copartnership; or unless such corporation uses with its corporate name, in this state, such an affix or prefix. A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, or a corporation acquiring or becoming possessed of all the estate, property, rights, privileges and franchises of any other corporation or corporations by merger, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded. No corporation shall be hereafter organized under the laws of this state, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "title," "casualty," "surety," "fidelity," "savings," "investment," "loan" or "benefit" as part of its name, except a corporation formed under the banking law or the insurance law.

2. No corporation, society or association, whether now existing or hereafter organized under or by virtue of the laws of this state, shall ever employ the words "Lucretia Mott" to designate, describe or name any hospital, infirmary or dispensary, or any part thereof, or any similar institution.

Amended by L. 1911, chap. 638; L. 1912, chap. 2; L. 1913, chap. 24, and L. 1916, chap. 22. In effect April 17, 1916.

§ 7. Amended and supplemental certificates.

If in the original or amended certificate of incorporation of any corporation, or if in a supplemental certificate of any corporation any informality exist, or if any such certificate contain any matter not authorized by law to be stated therein, or if the proof or acknowledgment thereof shall be defective, the corporators or directors of the corporation may make and file an amended certificate correcting such informality or defect or striking out such unauthorized matter; and the certificate amended shall be deemed to be amended accordingly as of the date such amended certificate was filed, and upon the filing of such an amended certificate of incorporation, the corporation shall then for all purposes be deemed to be a corporation from the time of filing the original certificate.

The supreme court may, upon due cause shown, and proof made, and upon notice to the attorney-general, and to such other persons as the court may direct, and upon such terms and conditions as it may impose, amend any certificate of incorporation which fails to express the true object and purpose of the corporation, so as to truly set forth such object and purpose.

When an amended or supplemental certificate is filed, an entry shall be made upon the margin of the index and record of the original certificate of the date and place of record of every such amended certificate.

The amendment of a certificate under this section shall be without prejudice to any pending action or proceeding, or to any rights previously accrued.

§ 8. Lost or destroyed certificates.

If either of the certificates of incorporation shall be lost or destroyed after filing, a certified copy of the other certificate may be filed in the place of the one so lost or destroyed and as of the date of its original filing, and such certified copy shall have the same force and effect as the original certificate had when filed.

§ 9. Certificate and other papers as evidence; evidence of consolidation.

1. The certificate of incorporation of any corporation duly filed shall be presumptive evidence of its incorporation, and any amended certificate or other paper duly filed or recorded relating to the incorporation of any corporation or its existence or management, and containing facts required or authorized by law to be stated therein, shall be presumptive evidence of the existence of such facts.

2. Whenever, by the laws of any other state or territory, or the dominion of Canada, a copy of the certificate of organization or incorporation or any other certificate, certified or exemplified by any officer or officers in such state or territory or dominion, is or shall be prima facie evidence of the due formation, creation, existence, organization or capacity of any corporation or joint-stock company, created, organized or located in such state, territory or dominion, or claiming so to be, such certificate or certificates, duly exemplified, or a duly exemplified copy thereof, shall be received in all actions and proceedings in this state, in or before all courts and officers, with the same force and effect in all respects as prima facie evidence as aforesaid, as in such other state, territory or dominion.

3. Where two or more corporations have been or shall hereafter be consolidated and merged into a new corporation, a certificate of the secretary of state under his official seal concisely stating the names of the respective corporations consolidated, the dates of the filing of the certificates respectively of the incorporation of such corporations in his office, the object for which they were formed, including the nature and locality of their business as set forth in their respective incorporation papers on file in his office, the date of the filing of the consolidation agreement and other proceedings in his office, the name of the new corporation formed by such consolidation and merger, the term of its corporate existence, the place where its principal office is situated and the amount of its capital stock, shall be presumptive and prima facie evidence in all actions and special proceedings for all purposes of

the incorporation of the corporations so consolidated, the incorporation of the new corporation by such consolidation and merger from the date of filing of said consolidation agreement and proceedings, and of the other facts so certified by him.

§ 10. Limitation of powers; provisions of certificate.

1. No corporation shall possess or exercise any corporate powers not given by law, or not necessary to the exercise of the powers so given.

2. The certificate of incorporation of any corporation may contain any provision for the regulation of the business and the conduct of the affairs of the corporation, and any limitation upon its powers, or upon the powers of its directors and stockholders, which does not exempt them from the performance of any obligation or the performance of any duty imposed by law.

§ 11. Grant of general powers.

Every corporation as such has power, though not specified in the law under which it is incorporated:

1. To have succession for the period specified in its certificate of incorporation or by law, and perpetually when no period is specified.

2. To have a common seal, and alter the same at pleasure.

3. To acquire by grant, gift, purchase, devise or bequest, to hold and to dispose of such property as the purposes of the corporation shall require, subject to such limitations as may be prescribed by law.

4. To appoint such officers and agents as its business shall require, and to fix their compensation, and

5. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and the transfer of its stock, if it has any, and the calling of meetings of its members. Such by-laws may also fix the amount of stock, which must be represented at meetings of the stockholders in order to constitute a quorum, unless otherwise provided by law. By-laws duly adopted at a meeting of the mem-

bers of the corporations shall control the action of its directors. No by-law adopted by the board of directors regulating the election of directors or officers shall be valid unless published for at least once a week for two successive weeks in a newspaper in the county where the election is to be held, and at least thirty days before such election. Subdivisions four and five of this section shall not apply to municipal corporations.

§ 12. Enlargement of limitations upon the amount of the property of non-stock corporations.

If any general or special law heretofore passed, or any certificate of incorporation, shall limit the amount of property a corporation other than a stock corporation may take or hold, such corporation may take and hold property of the value of ten million dollars or less, or the yearly income derived from which shall be one million dollars or less, notwithstanding any such limitations. In computing the value of such property, no increase in value arising otherwise than from improvements made thereon shall be taken into account.

Amended by L. 1909, chap. 276, and L. 1911, chap. 581.

§ 13. Acquisition of additional real property.

When any corporation, except a life insurance corporation, shall have sold or conveyed any part of its real property, the supreme court may, notwithstanding any restriction of a general or special law, authorize it to purchase and hold from time to time other real property, upon satisfactory proof that the value of the property so purchased does not exceed the value of the property so sold and conveyed within the three years next preceding the application.

§ 14. Acquisition of property without the state.

Any domestic corporation transacting business in other states or foreign countries may acquire and dispose of such property as shall be requisite for such corporation in the convenient transaction of its business. Any domestic corporation establishing or maintaining a charitable, philanthropic or educational institution within this state may also carry on its work and establish or main-

tain one or more branches of such institution or an additional institution or additional institutions in any other state, the District of Columbia or in any part of the territories or dependencies of the United States of America or in any foreign country and for either of said purposes may take by devise or bequest, hold, purchase, mortgage, sell and convey or otherwise dispose of such real and personal property without this state as may be requisite therefor. But nothing in this section contained shall be construed as exempting from taxation property to any additional amount than is now allowed to such corporation under existing laws.

§ 15. Certificate of authority of a foreign corporation.

No foreign stock corporation other than a moneyed corporation, shall do business in this state without having first procured from the secretary of state a certificate that it has complied with all the requirements of law to authorize it to do business in this state, and that the business of the corporation to be carried on in this state is such as may be lawfully carried on by a corporation incorporated under the laws of this state for such or similar business, or if more than one kind of business, by two or more corporations so incorporated for such kinds of business respectively. The secretary of state shall deliver such certificate to every such corporation so complying with the requirements of law. No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state, unless prior to the making of such contract it shall have procured such certificate. This prohibition shall also apply to any assignee of such foreign stock corporation and to any person claiming under such assignee or such foreign stock corporation or under either of them. No certificate of authority shall be granted to any foreign corporation having the same name as an existing domestic corporation, or a name so nearly resembling it as to be calculated to deceive, nor to any foreign corporation, other than a moneyed or insurance corporation, with the word "trust," "bank," "banking," "insurance," "assurance," "indemnity," "guarantee," "guaranty," "savings," "investment," "loan" or "benefit," as a part of its name.

§ 16. Proof to be filed before granting certificate.

Before granting such certificate the secretary of state shall require every such foreign corporation to file in his office a sworn copy in the English language of its charter or certificate of incorporation and a statement under its corporate seal, and the signature of its president, vice-president or other acting head, particularly setting forth the business or objects of the corporation which it is engaged in carrying on or which it proposes to carry on within the state, and a place within the state which is to be its principal place of business, and designating a person upon whom process against the corporation may be served within the state. The person so designated must have an office or place of business at the place where such corporation is to have its principal place of business within the state and such designation must specify such office or place of business of the said person so designated, and if it is within a city the street and street number if any, or other suitable designation of the particular locality. Such designation shall be accompanied with the written consent of the person designated and shall continue in force until revoked by an instrument in writing designating in like manner some other person upon whom process against the corporation may be served in this state or until the filing in the same office of a written revocation of said consent executed by the person so designated. If the person so designated dies or removes from the place where the corporation has its principal place of business within the state, or files such revocation of his consent, and the corporation does not within thirty days after such death or removal or revocation of consent designate in like manner another person upon whom process against it may be served within the state, the secretary of state may revoke the authority of the corporation to do business within the state, and process against the corporation in an action upon any liability incurred within this state before such revocation, may, after such death or removal, or revocation of consent, and before another designation is made, be served upon the secretary of state. At the time of such service the plaintiff shall pay to the secretary of state two dollars, to be included in his taxable costs and disbursements, and the secretary of state shall forthwith mail a copy of such notice to such corpora-

tion if its address, or the address of any officer thereof, is known to him. The secretary of state may require the execution of any such designation, revocation or consent, to be authenticated as he deems proper and he may refuse to file it without such authentication.

§ 17. Reincorporation of foreign moneyed corporations.

Any moneyed corporation duly organized by or under the laws of any state of the United States, and having an office or doing business in this state, may file, if a banking corporation or authorized to make loans upon pledges or deposits, in the office of the superintendent of banks, and if an insurance corporation in the office of the superintendent of insurance, the documents described in section eighteen of this chapter, and such documents shall be recorded as original certificates of incorporation are required by law to be recorded. The fees for filing and recording such documents, together with the tax, if any, required by law to be paid before the incorporation of a domestic company of the same class, must be paid before filing.

§ 18. Papers to be filed upon reincorporation.

The documents to be filed by any such corporation shall include,

1. A copy of its charter, certificate of incorporation, or other document constituting it a body corporate, with such amendments, if any, as are desired by the corporation or are required by the laws of New York, authenticated as an original certificate of incorporation is required to be authenticated;

2. A declaration of its desire to become a corporation of this state and of its submission to the laws of this state, duly executed by the authority of the body in which its corporate powers are vested.

3. A certificate of the superintendent of that department in which these papers are filed that the charter, certificate of incorporation or other constituent document, with its proposed amendments, if any, as filed, is in all respects consistent with the laws of this state relating to domestic corporations of the same class; that the corporation applicant has complied with all conditions

imposed by its laws upon domestic corporations of the same class beginning business in this state, with the exception of any provisions concerning the residence of a majority of the corporators, trustees, or directors of such corporation; that its name is not the same with the name of any domestic corporation, nor likely to be confounded with any such name, and that it has paid all fees and taxes due from it to the state, including the tax, if any, imposed by this state upon the original incorporation of a company of the same class.

§ 19. When reincorporation effected and effect thereof.

From the date of filing these documents the corporation shall become and be a corporation of this state, and shall be subject to all the laws of this state applicable to corporations of the same class; but its existence and powers as such corporation shall terminate if it shall fail at any time for one month to maintain an office within the state at which an authorized officer or agent shall be present at all reasonable business hours, prepared to exhibit the books of the company to the proper authorities of this state and to receive service of process; or if it shall fail within two years to terminate its corporate existence derived from any other state, by surrender of its charter or by dissolution.

§ 20. Acquisition of real property in this state by certain foreign corporations.

Any foreign corporation doing business in this state and created under the laws of the United States, or of any state or territory thereof, or of any foreign state or nation which borders the United States of America and which by its laws confers similar privileges on corporations created by the laws of the state of New York, may acquire and hold such real property in this state as may be necessary for its corporate purposes in the transaction of its business in this state, and convey the same by deed or otherwise in the same manner as a domestic corporation.

Amended by chap. 68 of 1910.

§ 21. Acquisition by foreign corporation of real property in this state.

Any foreign corporation may purchase at a sale upon the foreclosure of any mortgage held by it, or, upon any judgment or decree for debts due it, or, upon any settlement to secure such debts, any real property within this state covered by or subject to such mortgage, judgment, decree or settlement, and may take by devise any real property situated within this state and hold the same for not exceeding five years from the date of such purchase, or from the time when the right to the possession thereof vests in such devisee, and convey it by deed or otherwise in the same manner as a domestic corporation.

§ 22. Prohibition of banking powers.

No corporation, domestic or foreign, other than a corporation formed under or subject to the banking laws of this state or of the United States, except as permitted by such laws, shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes or other evidences of debt, of receiving deposits, of buying and selling bills of exchange, or of issuing bills, notes or other evidences of debt for circulation as money, or of engaging in any other form of banking; nor shall any such corporation, except an express company having contracts with railroad companies for the operation of an express service upon the lines of such railroad companies, or a transatlantic steamship company, or a telegraph company, or a corporation incorporated prior to the year eighteen hundred and fifty, to promote the welfare of emigrants, possess the power of receiving money for transmission or of transmitting the same, by draft, traveler's check, money order or otherwise.

Amended by L. 1911, chap. 771.

§ 23. Qualification of members as voters.

Unless otherwise provided in the certificate of incorporation, every stockholder of record of a stock corporation shall be entitled at every meeting of the corporation to one vote for every share of stock standing in his name on the books of the corporation; and at every meeting of a non-stock corporation, every member, unless disqualified by the by-laws, shall be entitled to one vote. The stockholders of a stock corporation, by a by-law adopted by a vote at any

annual meeting, or at any special meeting duly called for such purpose, may prescribe a period, not exceeding forty days prior to meetings of the stockholders, during which no transfer of stock on the books of the corporation may be made. Except in cases of express trust, or in which other provision shall have been made by written agreement between the parties, the record holder of stock which shall be held by him as security, or which shall actually belong to another, upon demand therefor and payment of necessary expenses thereof, shall issue to such pledgor or to such actual owner of such stock, a proxy to vote thereon. No member of a corporation shall sell his vote or issue a proxy to vote to any person for any sum of money or any thing of value. The books and papers containing the record of membership of the corporation shall be produced at any meeting of its members upon the request of any member. If the right to vote at any such meeting shall be challenged, the inspectors of election, or other persons presiding thereat, shall require such books, if they can be had, to be produced as evidence of the right of the person challenged to vote at such meeting, and all persons who may appear from such books to be members of the corporation may vote at such meeting in person or by proxy, subject to the provisions of this chapter.

§ 24. Cumulative voting.

The certificate of incorporation of any stock corporation may provide that at all elections of directors of such corporation, each stockholder shall be entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit, which right, when exercised, shall be termed cumulative voting. The stockholders of a corporation heretofore formed, who, by the provisions of laws existing on April thirtieth, eighteen hundred and ninety-one, were entitled to the exercise of such right, may hereafter exercise such right according to the provision of this section.

§ 25. Voting trust agreements.

A stockholder may, by agreement in writing, transfer his stock to any person or persons for the purpose of vesting in him or them the right to vote thereon for a time not exceeding five years upon terms and conditions stated, pursuant to which such person or

persons shall act; every other stockholder, upon his request therefor, may, by a like agreement in writing, also transfer his stock to the same person or persons and thereupon may participate in the terms, conditions and privileges of such agreement; the certificates of stock so transferred shall be surrendered and canceled and certificates therefor issued to such transferee or transferees in which it shall appear that they are issued pursuant to such agreement and in the entry of such transferee or transferees as owners of such stock in the proper books of said corporation that fact shall also be noted and thereupon he or they may vote upon the stock so transferred during the time in such agreement specified; a duplicate of every such agreement shall be filed in the office of the corporation where its principal business is transacted and be open to the inspection of any stockholder, daily, during business hours.

§ 26. Proxies.

Every member of a corporation, except a religious corporation, entitled to vote at any meeting thereof may so vote by proxy.

No officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking law shall act as proxy for any stockholder at any meeting of any such corporation.

Every proxy must be executed in writing by the member himself, or by his duly authorized attorney. No proxy hereafter made shall be valid after the expiration of eleven months from the date of its execution unless the member executing it shall have specified therein the length of time it is to continue in force, which shall be for some limited period. Every proxy shall be revocable at the pleasure of the person executing it; but a corporation having no capital stock may prescribe in its by-laws the persons who may act as proxies for members, and the length of time for which proxies may be executed.

§ 27. Challenges.

Every member of a corporation offering to vote at any election or meeting of the corporation shall, if required by an inspector of election or other officer presiding at such election or meeting, or by any other member present, take and subscribe the following oath: "I do solemnly swear that in voting at this election I have not, either directly, indirectly or impliedly received any promise

or any sum of money or any thing of value to influence the giving of my vote or votes at this meeting or as a consideration therefor." Any person offering to vote as proxy for any other person shall present his proxy and, if so required, take and subscribe the following oath: "I do solemnly swear that I have not, either directly, indirectly or impliedly, given any promise or any sum of money or any thing of value to induce the giving of a proxy to me to vote at this election, or received any promise or any sum of money or any thing of value to influence the giving of my vote at this meeting, or as a consideration therefor." The inspectors or persons presiding at the election may administer such oath, and all such oaths and proxies shall be filed in the office of the corporation.

§ 28. Effect of failure to elect directors.

If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected.

§ 29. Mode of calling special election of directors.

If the election has not been held on the day so designated, the directors shall forthwith call a meeting of the members of the corporation for the purpose of electing directors, of which meeting notice shall be given in the same manner as of the annual meeting for the election of directors.

If such meeting shall not be so called within one month, or, if held, shall result in a failure to elect directors, any member of the corporation may call a meeting for the purpose of electing directors by publishing a notice of the time and place of holding such meeting at least once in each week for two successive weeks immediately preceding the election, in a newspaper published in the county where the election is to be held and in such other manner as may be prescribed in the by-laws for the publication of notice of the annual meeting, and by serving upon each member, either personally or by mail, directed to him at his last known post-office address, a copy of such notice at least two weeks before the meeting.

§ 30. Mode of conducting special election of directors.

Such meeting shall be held at the office of the corporation, or if it has none, at the place in this state where its principal business has been transacted, or if access to such office or place is denied or can not be had, at some other place in the city, village or town where such office or place is or was located.

At such meeting the members attending shall constitute a quorum. They may elect inspectors of election and directors and adopt by-laws providing for future annual meetings and election of directors, if the corporation has no such by-laws, and transact any other business which may be transacted at an annual meeting of the members of the corporation.

§ 31. Qualification of voters and canvass of votes at special election.

In the absence at such meeting of the books of the corporation showing who are members thereof, each person, before voting, shall present his sworn statement setting forth that he is a member of the corporation; and if a stock corporation, the number of shares of stock owned by him and standing in his name on the books of the corporation, and, if known to him, the whole number of shares of stock of the corporation outstanding. On filing such statement, he may vote as a member of the corporation; and if a stock corporation, he may vote on the shares of stock appearing in such statement to be owned by him and standing in his name on the books of the corporation.

The inspectors shall return and file such statements, with a certificate of the result of the election, verified by them, in the office of the clerk of the county in which such election is held, and the persons so elected shall be the directors of the corporation.

§ 32. Powers of supreme court respecting elections.

The supreme court shall, upon the application of any person or corporation aggrieved by or complaining of any election of any corporation or any proceeding, act or matter touching the same, upon notice thereof to the adverse party, or to those to be affected thereby, forthwith and in a summary way hear the affidavits,

proofs and allegations of the parties, or otherwise inquire into the matters or causes of complaint, and establish the election or order a new election, or make such order and give such relief as right and justice may require.

§ 33. Stay of proceedings in actions collusively brought.

If an action is brought against a corporation by the procurement or default of its directors, or any of them, to enforce any claim or obligation declared void by law, or to which the corporation has a valid defense, and such action is in the interest or for the benefit of any director, and the corporation has by his connivance made default in such action, or consented to the validity of such claim or obligation, any member of the corporation may apply to the supreme court, upon affidavit, setting forth the facts, for a stay of proceedings in such action, and on proof of the facts in such further manner and upon such notice as the court may direct, it may stay such proceedings or set aside and vacate the same, or grant such other relief as may seem proper, and which will not injuriously affect an innocent party, who, without notice of such wrongdoing and for a valuable consideration, has acquired rights under such proceedings.

§ 34. Quorum of directors and powers of majority.

The affairs of every corporation shall be managed by its board of directors, at least one of whom shall be a resident of this state. Unless otherwise provided a majority of the board of directors of a corporation at a meeting duly assembled shall be necessary to constitute a quorum for the transaction of business and the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors. The members of a corporation may in by-laws fix the number of directors necessary to constitute a quorum at a number less than a majority of the board, but at least equal to one-third of its number. Subject to the by-laws, if any, adopted by members of a corporation, the directors may make necessary by-laws of the corporation.

§ 35. Directors as trustees in case of dissolution.

Upon the dissolution of any corporation, its directors, unless other persons shall be appointed by the legislature, or by some court of competent jurisdiction, shall be the trustees of its creditors, stockholders or members, and shall have full power to settle its affairs, collect and pay outstanding debts, and divide among the persons entitled thereto the money and other property remaining after payment of debts and necessary expenses.

Such trustees shall have authority to sue for and recover the debts and property of the corporation, by their name as such trustees, and shall jointly and severally be personally liable to its creditors, stockholders or members, to the extent of its property and effects that shall come into their hands.

§ 36. Forfeiture for non-user.

If any corporation, except a railroad, turnpike, plank-road or bridge corporation, shall not organize and commence the transaction of its business or undertake the discharge of its corporate duties within two years from the date of its incorporation, its corporate powers shall cease.

§ 37. Extension of corporate existence.

Any domestic corporation at any time before the expiration thereof, may extend the term of its existence beyond the time specified in its original certificate of incorporation, or by law, or in any certificate of extension of corporate existence, by the consent of the stockholders owning two-thirds in amount of its capital stock, or if not a stock corporation, by the consent of two-thirds of its members, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president, and by the secretary or an assistant secretary of the corporation, and if a corporation formed under or subject to the banking law shall be

filed in the office of the superintendent of banks, if an insurance corporation, in the office of the superintendent of insurance, and otherwise in the office of the secretary of state, and shall by such officer be duly recorded and indexed in a book specially provided therefor, and a certified copy of such certificate, with a certificate of such officer of such filing and record, or a duplicate original of such certificate, shall be filed and similarly recorded and indexed in the office of the clerk of the county wherein the corporation has its principal place of business, and shall be noted in the margin of the record of the original certificates of such corporation, if any, in such offices, and thereafter the term of the existence of such corporation shall be extended as designated in such certificate.

The certificate of incorporation of any corporation whose duration is limited by such certificate or by law, may require that the consent of the stockholders owning a greater percentage than two-thirds of the stock, if a stock corporation, or of more than two-thirds of the members, if a non-stock corporation, shall be requisite to effect an extension of corporate existence as authorized by this section.

Amended by L. 1913, ch. 306.

§ 38. Revival of corporate existence.

If the term of existence of any domestic corporation shall have expired and it shall be made satisfactorily to appear to the supreme court that such corporation was legally organized pursuant to any law of this state, and that it shall have issued its bonds payable at a date beyond the date fixed in its charter or certificate of incorporation for the expiration of its corporate existence, and such bonds shall be unmatured and unpaid, or, if a bank, incorporated under a general law of this state, that shall have issued any other obligations or shall have incurred any other indebtedness which at the date of the application shall be unsatisfied or unpaid, the supreme court may, upon the application of any person interested and upon such notice to such other parties as the court may require, by order, authorize the filing and recording of a certificate reviving the existence of such corporation, upon such conditions and with such limitations as such order shall specify, and extending such corporate existence for a term not exceeding the term for which it was originally incorporated. Upon filing and

recording such certificate in the same manner as certificates of extension of corporate existence duly issued before the expiration of the existence of a domestic corporation are authorized by law to be filed and recorded, such corporate existence shall be revived and extended in pursuance of the terms of such order, but such revival and extension shall not affect any litigation commenced after such expiration and pending at the time of such revival.

Amended by L. 1911, chap. 63.

§ 39. Approval of certificates of extension or revival; when required.

In the case of a corporation formed under or subject to the banking law, no certificate of extension or revival shall be filed or recorded unless it shall have indorsed thereon the written approval of the superintendent of banks; or, if an insurance corporation, unless it shall have indorsed thereon the written approval of the superintendent of insurance; and, if a turnpike or bridge corporation, it shall not be filed unless it shall have indorsed thereon or annexed thereto a certified copy of a resolution of the board of supervisors of each county in which such turnpike or bridge is located, approving of and authorizing such extension.

§ 40. Extension when stock is owned by another corporation.

If all the stock of a corporation other than a corporation formed under or subject to the banking law, or an insurance corporation, or a turnpike, plank-road or bridge corporation shall be lawfully owned by another stock corporation entitled by law to take a surrender and merger thereof, the corporate existence of such corporation whose stock is so owned may be extended at any time for the term of the corporate existence of the possessor corporation, by filing in the office or offices in which the original certificate or certificates of incorporation of the first-mentioned corporation were filed a certificate of such extension executed by its president and secretary and by such corporation owning all the shares of its capital stock.

§ 41. Effect of extension.

Every corporation extending its corporate existence under this chapter or under any general law of the state shall thereafter be subject to the provisions of this chapter and of such general law, notwithstanding any special provisions in its charter, and shall thereafter be deemed to be incorporated under the general laws of the state relating to the incorporation of a corporation for the purpose of carrying on the business in which it is engaged, and shall be subject to the provisions of such law.

§ 42. When notice of lapse of time unnecessary.

Whenever under the provisions of any of the corporate laws a corporation is authorized to take any action after notice to its members or after the lapse of a prescribed period of time, such action may be taken without notice and without the lapse of any period of time, if such action be authorized or approved, and such requirements be waived in writing by every member of such corporation, or by his attorney thereunto authorized.

§ 43. As to acts of directors.

Whenever, under the provisions of any of the corporate laws, a corporation is authorized to take any action by the agreement or action of its directors, managers or trustees, such agreement or action may be taken by such directors, regularly convened as a board, and acting by a majority of a quorum, except when otherwise expressly required by law or the by-laws of the corporation and any such agreement shall be executed in behalf of the corporation by such officers as shall be designated by the board of directors, managers or trustees. At any meeting at which every member of the board of directors shall be present, though held without notice, any business may be transacted which might have been transacted if the meeting had been duly called. Except when otherwise required by law or the by-laws of the corporation, special meetings of the members of the corporation may be called in the same manner as the annual meeting thereof.

§ 44. Political contributions prohibited; penalty.

No corporation or joint-stock association doing business in this state, except a corporation or association organized or maintained for political purposes only, shall directly or indirectly pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for, or in aid of, any corporation, joint-stock or other association organized or maintained for political purposes, or for, or in aid of, any candidate for political office or for nomination for such office, or for any political purpose whatever, or for the reimbursement or indemnification of any person for moneys or property so used. Any officer, director, stockholder, attorney or agent of any corporation or joint-stock association which violates any of the provisions of this section, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this section, shall be guilty of a misdemeanor and punishable by imprisonment in a penitentiary or county jail for not more than one year and a fine of not more than one thousand dollars. No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial, for a violation of any of the provisions of this section, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or to subject him to a penalty or forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation or proceeding.

ARTICLE 3.

CHANGE OF NAME.

SECTION 60. Petition by corporation to change name.

61. Contents of petition.

62. Notice of presentation of petition.

63. Order authorizing change.

64. When change to take effect.

65. Substitution of new name in pending action or proceeding.

§ 60. Petition by corporation to change name.

A petition to assume another corporate name may be made by a domestic corporation, whether incorporated by a general or special law, to the supreme court at a special term thereof, held in the judicial district in which its principal business office shall be situated, or, if it be other than a stock corporation, at a special term held in the judicial district in which its certificate of incorporation is filed or recorded, or in which its principal property is situated, or in which its principal operations are or theretofore have been conducted. If it be a banking, insurance or railroad corporation, the petition must be authorized by a resolution of the directors of the corporation, and approved if a banking corporation, by the superintendent of banks; if an insurance corporation by the superintendent of insurance, and if a railroad corporation, by the public service commission. The petition to change the name of any other corporation must have annexed thereto a certificate of the secretary of state, that the name which such corporation proposes to assume is not the name of any other domestic corporation or a name which he deems so nearly resembling it, as to be calculated to deceive.

Amended by chap. 296 of 1910.

§ 61. Contents of petition.

The petition must be in writing, signed by the petitioner and verified in like manner as a pleading in a court of record, and must specify the grounds of the application, its present name, and the name it proposes to assume, which must not be the name of any other corporation, or a name so nearly resembling it as to be

calculated to deceive; and if it be a railroad corporation, a corporation having banking powers or the power to make loans upon pledges or deposits, or to make insurances, that the petition has been duly authorized by a resolution of the directors of the corporation and approved by the proper officer.

§ 62. Notice of presentation of petition.

If the petition be made by a corporation located elsewhere than in the city and county of New York, notice of the presentation thereof shall be published once in each week for three successive weeks in a newspaper of every county in which such corporation shall have a business office, or if it has no business office, of the county in which its principal corporate property is situated, or in which its operations are or theretofore have been principally conducted, which newspaper, if it be a banking corporation, shall be designated by the superintendent of banks, if an insurance corporation, by the superintendent of insurance, or of a railroad corporation, by the public service commission. In the city and county of New York such notice shall be published once in each week for three successive weeks in two daily newspapers published in such county. If the petition be made by a domestic corporation organized under or subject to the religious or membership corporations law the court may dispense with the publication of the notice of the presentation of such petition or require notice of such presentation to be given to such person and in such manner as the court thinks proper.

A copy of the petition and notice of motion shall be filed with the secretary of state, and the proposed name shall thereupon be reserved for said corporation until three weeks after the date of such motion, and until three weeks after the date of any adjournment of such motion if notice of such adjournment shall be filed with the secretary of state, and no certificate of incorporation of a proposed corporation, having the same name as the name proposed in such petition, or a name so nearly resembling it as to be calculated to deceive, shall be filed in any office for the purpose of effecting its incorporation, and no corporation formed without the state of New York having the same name or a name so nearly resembling it as to be calculated to deceive shall be given authority to do business in this state.

Amended by chap. 296 of 1910.

§ 63. Order authorizing change.

If the court to which the petition is presented is satisfied thereby, or by the affidavit and certificate presented therewith, that the petition is true, and that there is no reasonable objection to the change of name proposed and that the petition has been duly authorized and that notice of the presentation of the petition, if required by law, has been made, the court shall make an order authorizing the petitioner to assume the name proposed on a day specified therein, not less than thirty days after the entry of the order. The order shall be directed to be entered and the papers on which it was granted to be filed within ten days thereafter in the office of the clerk of the county in which its certificate of incorporation, if any, shall be filed, or if there be none filed, in which its principal office shall be located, or if it has no business office in the county in which its principal property is situated, or in which its operations are or theretofore have been principally conducted, or in the office of the clerk of the county in which the special term granting the order is held; and that a certified copy of such order shall, within ten days after the entry thereof, be filed in the office of the secretary of state; and also, if it be a banking corporation, in the office of the superintendent of banks, or if it be an insurance corporation, in the office of the superintendent of insurance, or if it be a railroad corporation, in the offices of the public service commissions. Such order shall also direct the publication, within ten days after the entry thereof of a copy thereof, in a designated newspaper, in the county in which the order is directed to be entered, once in each week for four successive weeks. The court may dispense with the publication of a copy of such order and require notice to be given to such persons and in such manner as it thinks proper if the petition be made by a domestic corporation organized under or subject to the religious or membership corporations law.

Amended by chap. 296 of 1910.

§ 64. When change to take effect.

If the order shall be fully complied with, and within forty days after the making of the order, an affidavit of the publication thereof shall be filed and recorded in the office in which the order is en-

tered, and in each office in which certified copies thereof are required to be filed, if any, the petitioner shall, on and after the day specified for that purpose in the order, be known by the name which is thereby authorized to be assumed, and by no other name. No proceedings had prior to April fourth, eighteen hundred and ninety-four, under sections two thousand four hundred and fourteen and two thousand four hundred and fifteen of the code of civil procedure for the change of the name of a corporation, shall be invalid by reason of the non-filing of an affidavit of the publication of the order changing such name within twenty days from the date thereof.

And no proceedings heretofore had under the provisions of article three, chapter twenty-three, consolidated laws, for the change of the name of a corporation, shall be invalid by reason of the non-filing and recording of such affidavit of the publication of the order changing such name within forty days from the making of such order.

Amended by L. 1913, chap. 721. In effect May 24, 1913.

§ 65. Substitution of new name in pending action or proceeding.

An action or special proceeding, civil or criminal, commenced by or against a corporation whose name is so changed shall not abate, nor shall any relief, recovery or other proceeding therein be prevented, impeded or impaired in consequence of such change of name. The plaintiff in the action or the party instituting the special proceeding, or the people, as the case requires, may at any time, obtain an order amending any of the papers or proceedings therein, by the substitution of the new name, without costs and without prejudice to the action or proceeding.

ARTICLE 4.

SALE OF CORPORATE REAL PROPERTY.

SECTION 70. Application of this article.

71. Petition.

72. Hearing on application.

73. Order to sell, mortgage or lease.

74. Insolvent corporation.

75. Service of notices.

76. Practice in cases not herein provided for.

§ 70. Application of this article.

Whenever any corporation is required by law to make application to the court for leave to mortgage, lease or sell its real estate, the proceeding therefor shall be had pursuant to the provisions of this article.

§ 71. Petition.

The proceeding shall be instituted by the presentation to the supreme court of the district or the county court of the county where the real property, or some part of it, is situated, by the corporation applicant, of a petition setting forth the following facts:

1. The name of the corporation and of its directors, trustees or managers, and of its principal officers, and their places of residence.

2. The business of the corporation or the object or purpose of its incorporation and a reference to the statute under which it was incorporated.

3. A description of the real property to be sold, mortgaged or leased, by metes and bounds, with reasonable certainty.

4. That the interests of the corporation will be promoted by the sale, mortgage or lease, of the real property specified, and a concise statement of the reasons therefor.

5. That such sale, mortgage or lease has been authorized, by a vote of at least two-thirds of the directors, trustees or managers of the corporation at a meeting thereof, duly called and held, and a copy of the resolution granting such authority.

6. The market value of the remaining real property of the corporation and the cash value of its personal assets, and the total amount of its debts and liabilities, and how secured, if at all.

7. The application proposed to be made of the moneys realized from such sale, mortgage or lease.

8. Where the consent of the shareholders, stockholders or members of the corporation is required by law to be first obtained, a statement that such consent has been given, and a copy of the consent, or a certified transcript of the record of the meeting at which it was given, shall be annexed to the petition.

9. A demand for leave to mortgage, lease or sell the real estate described.

The petition shall be verified in the same manner as a verified pleading in an action in a court of record.

§ 72. Hearing on application.

Upon presentation of the petition, the court may immediately proceed to hear the application, or it may, in its discretion, direct that notice of the application shall be given to any person interested therein, as a member, stockholder, officer or creditor of the corporation or otherwise, in which case the application shall be heard at the time and place specified in such notice, and the court may in any case appoint a referee to take the proofs and report the same to the court, with his opinion thereon. Any person, whose interests may be affected by the proceeding, may appear upon the hearing and show cause why the application should not be granted.

§ 73. Order to sell, mortgage or lease.

Upon the hearing of the application, if it shall appear, to the satisfaction of the court, that the interests of the corporation will be promoted thereby, an order may be granted authorizing it to sell, mortgage or lease the real property described in the petition, or any part thereof, for such sum, and upon such terms as the court may prescribe, and directing what disposition shall be made of the proceeds of such sale, mortgage or lease.

§ 74. Insolvent corporation.

If the corporation is insolvent, or its property and assets are insufficient to fully liquidate its debts and liabilities, the application shall not be granted, unless all the creditors of the corporation have been served with a notice of the time and place at which the application will be heard.

§ 75. Service of notices.

Service of notices, provided for in this article, may be made either personally or, in case of absence, by leaving the same at the place of residence of the person to be served, with some person of mature age and discretion, at least eight days before the hearing of the application, or by mailing the same, duly enveloped and addressed and postage paid, at least sixteen days before such hearing.

§ 76. Practice in cases not herein provided for.

In all applications made under this article, where the mode or manner of conducting any or all of the proceedings thereon is not expressly provided for, the court before whom such application may be pending, shall have the power to make all the necessary orders and give the proper directions to carry into effect the object and intent of this article, or of any act authorizing the sale of corporate real property, and the practice in such cases shall conform, as near as may be, to the ordinary practice in such court.

ARTICLE 5.

**JUDICIAL SUPERVISION OF CORPORATION AND OF THE OFFICERS
AND MEMBERS THEREOF.**

SECTION 90. Action against officers of corporation for misconduct.

91. Who may bring such an action.

91-a. Actions against officers by corporation, or receiver or trustee.

92. Visitation power over corporation not affected by this article.

§ 90. Action against officers of corporation for misconduct.

An action may be maintained against one or more trustees, directors, managers, or other officers of a corporation, to procure

a judgment for the following purposes, or so much thereof as the case requires:

1. Compelling the defendants to account for their official conduct, including any neglect of or failure to perform their duties, in the management and disposition of the funds and property, committed to their charge.

2. Compelling them to pay to the corporation, which they represent, or to its creditors, any money, and the value of any property, which they have acquired to themselves, or transferred to others, or lost, or wasted, by or through any neglect of or failure to perform or by other violation of their duties.

3. Suspending a defendant from exercising his office, where it appears that he has abused his trust.

4. Removing a defendant from his office, upon proof or conviction of misconduct, and directing a new election to be held by the body or board duly authorized to hold the same, in order to supply the vacancy created by the removal; or, where there is no such body or board, or where all the members thereof are removed, directing the removal to be reported to the governor, who may, with the advice and consent of the senate, fill the vacancies.

5. Setting aside an alienation of property, made by one or more trustees, directors, managers or other officers of a corporation, contrary to a provision of law, or for a purpose foreign to the lawful business and objects of the corporation, where the alienee knew the purpose of the alienation.

6. Restraining and preventing such an alienation, where it is threatened, or where there is good reason to apprehend that it will be made.

7. The court must, upon the application of either party, make an order directing the trial by a jury of the issue of neglect or failure of defendants to perform their duties; and for that purpose the questions to be tried must be prepared and settled as prescribed in section nine hundred and seventy of the code of civil procedure.

As to any litigation pending prior to September one, nineteen hundred and seven, the provisions of this section as they existed prior to that date shall apply.

§ 91. Who may bring such an action.

An action may be brought, as prescribed in the last section, by the attorney-general in behalf of the people of the state, or, except where the action is brought for the purpose specified in subdivision third or fourth of that section, by a creditor of the corporation, or by a trustee, director, manager, or other officer of the corporation, having a general superintendence of its concerns.

§ 91a. Actions against officers by corporation, or receiver or trustee.

The supreme court shall also have and exercise jurisdiction in equity, at the suit of a corporation, or of a receiver, or trustee in bankruptcy thereof, to compel one or more trustees, directors, managers or other officers of the corporation to account for injury to or losses of the funds, assets or property of the corporation, caused by or through any neglect or failure of the defendants to perform, or for violation of, their duties. The court must, upon the application of either party, make an order directing the trial by jury of the issue of negligence, and for that purpose the questions to be tried must be prepared and settled as prescribed in section nine hundred and seventy of the code of civil procedure.

Added by L. 1913, chap. 633.

§ 92. Visitatorial power over corporation not affected by this article.

This article does not divest or impair any visitatorial power over a corporation, which is vested by statute in a corporate body, or a public officer.

ARTICLE 6.

ACTION FOR SEQUESTRATION, ACTION FOR DISSOLUTION AND ACTION TO ENFORCE INDIVIDUAL LIABILITY OF OFFICER AND MEMBER OF CORPORATION.

- SECTION 100.** Action by judgment creditor for sequestration.
101. Action to dissolve a corporation.
 102. Who may bring action to dissolve a corporation.
 103. Temporary injunction in action authorized by this article.
 104. Temporary receiver.
 105. Additional powers and duties of temporary receiver.
 106. Permanent receiver.
 107. Additional duties and liabilities of permanent receiver.
 108. Application for appointment of receiver.
 109. Officers and stockholders may be made parties in action brought by creditor.
 110. Separate action may be brought against officers and stockholders.
 111. Proceedings in such actions.
 112. Distribution of property of corporation by judgment in actions under this article.
 113. Recovery of stock subscriptions.
 114. Liability of directors and stockholders.
 115. Effect of this article.
 116. Entry of judgment and filing copies thereof.

§ 100. Action by judgment creditor for sequestration.

Where final judgment for a sum of money has been rendered against a corporation created by or under the laws of the state, and an execution issued thereupon to the sheriff of the county, where the corporation transacts its general business, or where its principal office is located, has been returned wholly or partly unsatisfied, the judgment creditor may maintain an action to procure a judgment sequestrating the property of the corporation, and providing for a distribution thereof, as prescribed in section one hundred and twelve of this chapter.

§ 101. Action to dissolve a corporation.

In either of the following cases, an action to procure a judgment, dissolving a corporation, created by or under the laws of the state,

and forfeiting its corporate rights, privileges and franchises, may be maintained, as prescribed in the next section :

1. Where the corporation has remained insolvent for at least one year.

2. Where it has neglected or refused, for at least one year, to pay and discharge its notes or other evidences of debt.

3. Where it has suspended its ordinary and lawful business for at least one year.

4. If it has banking powers, or power to make loans on pledges or deposits, or to make insurances, where it becomes insolvent or unable to pay its debts, or has violated any provision of the act, by or under which it was incorporated, or of any other act binding upon it.

§ 102. Who may bring action to dissolve a corporation.

An action specified in the last section, may be maintained by the attorney-general, in the name and in behalf of the people. And whenever a creditor or stockholder of any corporation submits to the attorney-general a written statement of facts, verified by oath, showing grounds for an action under the provisions of the last section, and the attorney-general omits, for sixty days after this submission, to commence an action specified in the last section, then, and not otherwise, such creditor or stockholder may apply to the proper court for leave to commence such an action, and on obtaining leave may maintain the same accordingly; and if there be no person in existence upon whom service of the summons can be made under the provisions of section four hundred and thirty-one of the code of civil procedure, service of the summons in such action may be made in such manner as the court upon application by petition may direct.

Amended by L. 1912, chap. 204.

§ 103. Temporary injunction in action authorized by this article.

In an action, brought as prescribed in this article, the court may, upon proof of the facts authorizing the action to be main-

tained, grant an injunction order, restraining the corporation, and its trustees, directors, managers and other officers, from collecting or receiving any debt or demand, and from paying out, or in any way transferring or delivering, to any person, any money, property, or effects of the corporation, during the pendency of the action; except by express permission of the court. Where the action is brought to procure the dissolution of the corporation, the injunction may also restrain the corporation, and its trustees, directors, managers and other officers, from exercising any of its corporate rights, privileges, or franchises, during the pendency of the action; except by express permission of the court. The provisions of title second of chapter seventh of the code of civil procedure, relating to the granting, vacating or modifying of an injunction order, apply to an injunction order, granted as prescribed in this section; except that it can be granted only by the court.

§ 104. Temporary receiver.

In such an action, the court may also, at any stage thereof, appoint one or more receivers of the property of the corporation. A receiver, so appointed, before final judgment is a temporary receiver, until final judgment is entered. A temporary receiver has power to collect and receive the debts, demands, and other property of the corporation; to preserve the property, and the proceeds of the debts and demands collected; to sell or otherwise dispose of the property as directed by the court; to collect, receive and preserve the proceeds thereof; and to maintain any action or special proceeding, for either of those purposes. He must qualify as prescribed by law for the qualification of a permanent receiver. Unless additional powers are specially conferred upon him, as prescribed in the next section, a temporary receiver has only the powers specified in this section, and those which are incidental to the exercise thereof.

§ 105. Additional powers and duties of temporary receiver.

A temporary receiver, appointed as prescribed in the last section, is, in all respects, subject to the control of the court. In addition

to the powers conferred upon him, by the provisions of the last section, the court may, by the order or interlocutory judgment appointing him, or by an order subsequently made in the action, or by the final judgment, confer upon him the powers and authority, and subject him to the duties and liabilities, of a permanent receiver, or so much thereof as it thinks proper; except that he shall not make any distribution among the creditors or stockholders, before final judgment, unless he is specially directed so to do by the court.

§ 106. Permanent receiver.

A receiver appointed by or pursuant to a final judgment in the action, or a temporary receiver who is continued by the final judgment, is a permanent receiver, and has all the powers and authority conferred, and is subject to all the duties and liabilities imposed upon a receiver in article eleven of this chapter.

Am'd by L. 1909, ch. 240.

§ 107. Additional duties and liabilities of permanent receiver.

A permanent receiver shall keep an account of all moneys received by him, and on the first days of January, April, July and October, in each and every year make and file a written statement, verified by his oath that such statement is correct and true, showing the amount of money received by such receiver, his agents or attorneys, the amount he has a right to retain and the items for which he claims to retain the same, and the distributive share due each person interested therein. He shall pay such distributive share to the person or persons entitled thereto, on demand, at any time after such statement. Such account, statement, and all the books and papers of the corporation in the hands of such receiver, shall at all reasonable times be open for the inspection of all persons having an interest therein. And in case of neglect or refusal to comply with either of the above requirements, or any duty imposed upon him, the supreme court, at either an appellate division

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or special term, shall, on the application of the party aggrieved, unless such neglect or refusal shall be satisfactorily explained to the court, forthwith remove such receiver, and appoint some suitable person as receiver in his place. Such removal shall not vitiate or annul any legal proceedings had by such receiver; but such proceedings shall be continued by such successor as if no removal had been made. Such receiver shall also be liable to pay to the party interested, interest at the rate of ten per centum per annum on all moneys due to such party and retained by him more than one day after such demand made as aforesaid.

§ 108. Application for appointment of receiver.

Applications made by the attorney-general for the appointment of a receiver of a corporation shall be made in the judicial district in which the action in which the appointment is sought is triable.

§ 109. Officers and stockholders may be made parties in action brought by creditor.

Where the action is brought by a creditor of a corporation, and the stockholders, directors, trustees, or other officers, or any of them, are made liable by law, in any event or contingency, for the payment of his debt, the persons, so made liable, may be made parties defendant, by the original or by a supplemental complaint; and their liability may be declared and enforced by the judgment in the action.

§ 110. Separate action may be brought against officers and stockholders.

Where the stockholders, directors, trustees, or other officers of a corporation, who are made liable, in any event or contingency, for the payment of a debt, are not made parties defendant, as prescribed in the last section, the plaintiff in the action may maintain a separate action against them, to procure a judgment, declaring, apportioning and enforcing their liability.

§ 111. Proceedings in such actions.

In an action brought as prescribed in either of the last two sections, the court must, when it is necessary, cause an account to be taken of the property and of the debts of the corporation, and thereupon the defendant's liability must be apportioned accordingly; but, if it affirmatively appears, that the corporation is insolvent, and has no property to satisfy its creditors, the court may, without taking such an account, ascertain and determine the amount of each defendant's liability, and enforce the same accordingly.

§ 112. Distribution of property of corporation by judgment in actions under this article.

A final judgment in an action, brought against a corporation, as prescribed in this article, either separately or in conjunction with its stockholders, directors, trustees, or other officers, must provide for a just and fair distribution of the property of the corporation, and of the proceeds thereof, among its fair and honest creditors, in the order and in the proportions prescribed by law, in case of the voluntary dissolution of a corporation.

§ 113. Recovery of stock subscriptions.

Where the stockholders of the corporation are parties to the action, if the property of the corporation is not sufficient to discharge its debts, the interlocutory or final judgment, as the case requires, must adjudge that each stockholder pay into court the amount due and remaining unpaid, on the shares of stock held by him, or so much thereof as is necessary to satisfy the debts of the corporation.

§ 114. Liability of directors and stockholders.

If it appears, that the property of the corporation, and the sums collected or *collectable from the stockholders, upon their stock subscriptions, are or will be insufficient to pay the debts of the corporation, the court must ascertain the several sums, for which the

*So in original

directors, trustees, or other officers, or the stockholders of the corporation, being parties to the action, are liable; and must adjudge that the same be paid into court, to be applied, in such proportions and in such order as justice requires, to the payment of the debts of the corporation.

§ 115. Effect of this article.

This article does not repeal or affect any special provision of law, prescribing that a particular kind of corporation shall cease to exist, or shall be dissolved, in a case or in a manner, not prescribed in this article; or any special provision of law, prescribing the mode of enforcing the liability of the stockholders of a particular kind of corporation.

§ 116. Entry of judgment and filing certified copies thereof.

The final judgment in an action brought as prescribed in this article shall be entered in the office of the clerk of the county in which the principal business office, or the principal place of business of the corporation is located, and if it is adjudged that such corporation be dissolved, a certified copy of such judgment shall, if a banking corporation, be filed in the office of the superintendent of banks; if an insurance corporation, in the office of the superintendent of insurance; and if a business, transportation, railroad or membership corporation, in the office of the secretary of state.

Added by L. 1916, chap. 163. In effect April 7, 1916.

ARTICLE 7.

ACTION TO ANNUL A CORPORATION.

SECTION 130. Action by attorney-general to annul corporation when legislature directs.

131. Action by attorney-general to annul corporation by leave of court.

132. Notice of application for leave to commence action to annul corporation.

133. Jury trial.

134. Injunction and receiver in final judgment.

135. Temporary injunction.

136. Filing and publishing judgment.

§ 130. Action by attorney-general to annul corporation when legislature directs.

The attorney-general, whenever he is so directed by the legislature, must bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating or annulling the act of incorporation, or any act renewing the corporation, or continuing its corporate existence, upon the ground that the act was procured upon a fraudulent suggestion, or the concealment of a material fact, made by or with the knowledge and consent of any of the persons incorporated.

§ 131. Action by attorney-general to annul corporation by leave of court.

Upon leave being granted, as prescribed in the next section, the attorney-general may bring an action against a corporation created by or under the laws of the state, to procure a judgment, vacating the charter or annulling the existence of the corporation, upon the ground that it has, either

1. Offended against any provision of an act, by or under which it was created, altered or renewed, or an act amending the same, and applicable to the corporation; or,

2. Violated any provision of law, whereby it has forfeited its charter, or become liable to be dissolved, by the abuse of its powers; or,

3. Forfeited its privileges or franchises, by a failure to exercise its powers; or,

4. Done or omitted any act, which amounts to a surrender of its corporate rights, privileges, and franchises; or,

5. Exercised a privilege or franchise, not conferred upon it by law.

§ 132. Notice of application for leave to commence action to annul corporation.

Before granting leave, the court may, in its discretion, require such previous notice of the application as it thinks proper, to be given to the corporation, or any officer thereof, and may hear the corporation in opposition thereto.

§ 133. Jury trial.

An action, brought as prescribed in this article, is triable, of course and of right, by a jury, as if it was an action specified in section nine hundred and sixty-eight of the code of civil procedure and without procuring an order, as prescribed in section nine hundred and seventy of the code of civil procedure.

§ 134. Injunction and receiver in final judgment.

Where any of the matters, specified in section one hundred and thirty or section one hundred and thirty-one of this article, are established in an action, brought as prescribed in either of those sections, the court may render final judgment that the corporation, and each officer thereof, be perpetually enjoined from exercising any of its corporate rights, privileges, and franchises; and that it be dissolved. The judgment must also provide for the appointment of a receiver, the taking of an account, and the distribution of the property of the corporation, among its creditors and stockholders, as where a corporation is dissolved upon its voluntary application, as prescribed in article nine of this chapter.

§ 135. Temporary injunction.

In an action, brought as prescribed in this article, an injunction order may be granted, at any stage of the action, restraining the

corporation, and any or all of its directors, trustees and other officers, from exercising any of its corporate rights, privileges, or franchises; or from exercising certain of its corporate rights, privileges, or franchises, specified in the injunction order; or from exercising any franchise, liberty, or privilege, or transacting any business, not allowed by law. Such an injunction is deemed one of those specified in section six hundred and three of the code of civil procedure, and all the provisions of title second of chapter seventh of the code of civil procedure applicable to an injunction specified in that section, apply to an injunction granted as prescribed in this section, except that it can be granted only by the court.

§ 136. Filing and publishing judgment.

Where final judgment is rendered against a corporation, in an action, brought as prescribed in this article, the attorney-general must cause a copy of the judgment-roll to be forthwith filed in the office of the secretary of state; who must cause a notice of the substance and effect of the judgment, to be published, for four weeks, in a newspaper printed in the county, wherein the principal place of business of the corporation was located.

ARTICLE 8.

ACTION TO DISSOLVE MONEYED CORPORATION.

SECTION 150. Temporary injunction and receiver in action against moneyed corporation.

151. Order to show cause why injunction and receiver should not be permanent.
152. Inventory and appraisal by receiver.
153. Conversion of assets into cash by receiver.
154. Employment of counsel by receiver.
155. Notice to creditors by receiver.
156. Allowance, rejection and adjustment of claims by receiver.
157. Final settlement and distribution by receiver.
158. Notice of account and accounting by receiver.
159. Proceedings upon accounting.
160. Claims barred after distribution of assets by receiver.
161. Application of article.

§ 150. Temporary injunction and receiver in action against moneyed corporation.

Whenever the attorney-general shall commence an action against a moneyed corporation upon the information of either the superintendent of insurance, or the superintendent of banks, for the dissolution or sequestration of the property or annulment of the charter of a corporation formed under or subject to the banking or insurance law, and shall be satisfied that it is unsafe and inexpedient for such corporation to continue doing business, the supreme court may, on his application, in a case provided by law, appoint a receiver thereof, and may on such appointment grant an injunction restraining such corporation from carrying on its business until the further order of the court. The court may, in its discretion, dispense with notice of the application.

§ 151. Order to show cause why injunction and receiver should not be permanent.

The court, on granting an order without notice, either for the appointment of a receiver or for an injunction, or for both forms of relief, as herein provided, shall make an order that the corporation so proceeded against show cause at a term of the court to be held not more than thirty days thereafter, why such receiver and

injunction should not be permanent. Such order shall be served not less than eight days before the date upon which the hearing thereon is to be had. Unless the court otherwise directs, the receiver appointed in the first instance shall be permanent receiver of such corporation, and the injunction shall be continued during the pendency of the litigation. Such receiver shall, unless otherwise ordered by the court, continue to act as such up to and after final judgment, and until the affairs of the corporation shall be finally settled and its property distributed by him according to law. The bond to be given by the receiver on his appointment shall be fixed at such sum and so conditioned that it shall continue in force and effect until the final discharge of such receiver, including any liability which may be incurred by said receiver by virtue of his appointment as such in the final judgment, in case he shall be so named therein.

§ 152. Inventory and appraisal by receiver.

It shall be the duty of the receiver to take an inventory and make an appraisal of the assets and property of the corporation. In case the corporation is subject to the banking law, two disinterested appraisers shall be appointed by the superintendent of banks to aid in this duty, and in case the corporation is subject to the insurance law, such appraisers shall be appointed by the superintendent of insurance. Ten days' notice of such inventory and appraisal shall be given to the corporation and such inventory and appraisal shall be completed and filed with the clerk of the supreme court in the county in which the trial is to be had, within ninety days after the appointment of such receiver, and a certified copy thereof in the office of the attorney-general, and in the office of the superintendent of banks, or in the office of the superintendent of insurance, as the case may be, unless for good cause shown the officer appointing such appraisers shall, in writing, extend the time for the completion thereof. Such appraisers shall receive as compensation a reasonable sum, not exceeding fifteen dollars per day and actual and necessary expenses, to be paid by the receiver upon the approval of the officer by whom they were named. The receiver shall be chargeable with the amount of such

inventory and shall be relieved therefrom to the same extent and upon the same grounds as in the like case of an executor.

§ 153. Conversion of assets into cash by receiver.

The receiver shall proceed, immediately upon his appointment, to convert the assets of the corporation into cash.

§ 154. Employment of counsel by receiver.

It shall not be lawful for any receiver to pay to any attorney or counsel any costs, fees or allowance until the amount thereof shall have been stated to the special term, as expenses incurred by such receiver and shall have been approved by that court by an order duly entered. Any such order shall be the subject of review by the appellate division and the court of appeals on appeal thereto taken by any party. The receiver may employ not to exceed one counsel unless the employment of additional counsel shall be authorized by the supreme court after notice to the attorney-general of an application therefor.

§ 155. Notice to creditors by receiver.

1. Within thirty days after a receiver qualifies he shall cause to be published once a week for twelve weeks in a newspaper published at the principal place of business of the corporation, a notice to all creditors of the corporation to present their claims to such receiver at his place of business within fifteen days after the last publication of such order. He shall also mail a copy of such notice to all the creditors of the corporation known to him or as shown on the books of the company, at their last known place of residence.

2. The receiver of any title guaranty company heretofore or hereafter appointed, which company is authorized by law to issue policies of insurance or agreements of indemnity or guaranty, and which corporation has issued and outstanding at the time of the appointment of the receiver, policies of insurance or agreements of indemnity or guaranty, exceeding two thousand in number, shall not be required to mail to the holders or owners of said policies of insurance or of said agreements, the notice

required by law to be given to creditors of an insolvent moneyed corporation; but such receiver shall cause a notice to be published twice a week, for four successive weeks, in two newspapers published in the county where said corporation has its principal place of business; which said notice shall require all creditors and owners and holders of outstanding policies of insurance or agreements of indemnity or guaranty, to exhibit and prove their claim, within sixty days; and, in default of so doing, shall be precluded from all benefit of the judgment and from any and all distribution which may be made thereunder, except that the creditor or holder or owner of any policy or agreement of indemnity or guaranty, who shall exhibit or prove his claim, with an affidavit that he had no notice or knowledge thereof, in time to comply with the provisions hereof, at any time before an order is made directing a final settlement and distribution of assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may be applied, as if his claim had been exhibited and proved within the time limited by such notice. This subdivision shall apply to receivers of moneyed corporations.

Am'd by L. 1909, ch. 240.

§ 156. Allowance, rejection and adjustment of claims by receiver.

The receiver shall have the same power and authority with reference to the allowance or rejection of claims as is given to executors, and no reference shall be had to pass upon claims except such as may be disputed by such receiver. In case any claim shall be disputed, the receiver shall immediately upon the expiration of the time for the presentation of claims, upon notice to the parties whose claims have been rejected, apply to the court for the appointment of a referee to hear and determine as to the allowance thereof. Claims allowed by the receiver shall be subject to objection upon the final settlement and their validity may be determined as the validity of claims against estates are determined upon final settlement by a surrogate.

§ 157. Final settlement and distribution by receiver.

The receiver may apply for a final settlement of his accounts and an order for distribution at any time after the expiration of six months, and shall so apply within eighteen months after qualifying as such. The attorney-general or any creditor, or party interested, may apply for an order that the receiver show cause why an accounting and distribution should not be had at any time after the expiration of one year after the receiver qualifies; and it shall be the duty of the attorney-general, after the expiration of eighteen months from the time the receiver enters upon his duties, in case he has not applied for a final settlement of his accounts, to apply for such an order on notice to such receiver. In case of such application by a party other than the receiver, the court shall direct the receiver to take steps to account with all convenient speed. The receiver is not required or authorized to file any account, except as herein provided, except by special order of the court.

§ 158. Notice of account and accounting by receiver.

1. The receiver shall file his account, together with a statement of the items and amounts claimed by his counsel, up to that date with the court and a duplicate thereof, together with the vouchers, with the attorney-general, at least thirty days before the time fixed for his final settlement and accounting, and the attorney-general shall serve upon the attorney for the receiver any objections he may have to the account, or to the statement as to the items and amounts claimed by counsel for compensation, appearing in such account on or before such hearing. The receiver shall also within ten days after the filing of the account, mail to each creditor of the corporation a notice of the time and place of the filing of his account, and a notice of the time and place of the presentation of the account to the court. Unless objection is made to the items of the account by a creditor or on behalf of the attorney-general, no referee shall be appointed to pass thereon, but the same shall be examined and settled by the court. In case objection is made a referee may be appointed to take the testimony and report the same to the court.

2. Prior to the final settlement of accounts of a receiver of any moneyed corporation, having in force, at the time of his appointment, outstanding policies of insurance or agreements of indemnity or guaranty, exceeding two thousand in number, said receiver shall give notice to all of the creditors and to the owners or holders of said policies of insurance or agreements of indemnity or guaranty, issued or entered into by such insolvent corporation, by publication of a notice published at least twice a week, for three successive weeks, immediately preceding the making of an application for a final settlement of his accounts and for an order for the distribution of the assets in his hands. Said notice shall state the fact that an application for a final settlement of his accounts and for an order for the distribution of the assets in hand will be made, and shall also state the time and place, when and where the application will be made. Upon the hearing of such application and motion, the court shall, unless objection is made to the items of the account by a creditor or by a holder or owner of a policy of insurance or agreement of indemnity or guaranty, or on behalf of the attorney-general, examine and settle the said accounts, and make an order for the settlement, adjustment and distribution of the assets in the hands of the receiver. Where objection is made to the items of account, the court may refer the same to a referee to examine and pass thereon. This subdivision shall apply to receivers of all moneyed corporations heretofore or hereafter appointed.

Am'd by L. 1909, ch. 240.

§ 159. Proceedings upon accounting.

Upon any accounting by the receiver, after the expiration of the time for creditors to present claims, the court shall direct the receiver to immediately convert the entire assets of the corporation in his hands into cash, in case any of the assets have not been so converted, unless good and sufficient cause to the contrary shall appear to the satisfaction of the court, such as to authorize an order granting the receiver additional time for that purpose, and upon any such accounting the court shall direct the receiver to distribute the assets of the corporation in his hands to the persons entitled

thereto, except so much thereof as may be necessary to be retained for the purpose of administering the trust and making payment upon contested claims, and upon such claims as may thereafter be presented and entitled to be paid. Whenever the attorney-general shall apply for an order to show cause why an accounting should not be had by a receiver by reason of his failure to so account within twelve months after his appointment, and shall deem it advisable to designate counsel to act on his behalf, the court may, upon the accounting, make a reasonable allowance by way of counsel fee to counsel so designated.

§ 160. Claims barred after distribution of assets by receiver.

Upon the granting of the application and the making of the order of distribution, as provided in subdivision two of section one hundred and fifty-eight of this article, and the distribution of the assets in the hands of the receiver, in the manner directed by the order of the court, all claims of the creditors or of holders or owners of policies of insurance or agreements of indemnity or guaranty, against such receiver, shall be barred. This section shall apply to receivers of all moneyed corporations.

Am'd by L. 1909, ch. 240.

§ 161. Application of article.

Except as provided in sections one hundred and fifty-five, one hundred and fifty-eight, subdivision two, and one hundred and sixty of this article, this article shall apply to all actions for the appointment of receivers of moneyed corporations brought by the attorney-general, and to all receivers of such corporations heretofore or hereafter appointed, and to the settlement and adjustment of their accounts and distribution of assets in their hands, and all proceedings with reference thereto hereafter to be taken, and shall supersede and repeal all provisions of law inconsistent herewith, so far as the same relate to actions for the sequestration, annulment or dissolution of moneyed corporations. As to all other corporations and as to matters not affected by this article, provisions of law heretofore existing shall remain in full force and effect.

ARTICLE 9.

PROCEEDINGS FOR VOLUNTARY DISSOLUTION OF CORPORATION.

- SECTION 170. Petition for voluntary dissolution of corporation.
171. Directors or trustees may be required to petition.
 172. Petition when directors or trustees do not agree.
 173. Corporations excepted from two preceding sections.
 174. Contents of petition.
 175. Affidavit to be annexed to petition.
 176. Presentation of petition.
 177. Corporations without stockholders.
 178. Action by court upon petition for dissolution.
 179. Publication of order to show cause why corporation should not be dissolved.
 180. Service of order to show cause.
 181. Entering and filing order and papers.
 182. Temporary receiver.
 183. Application for appointment of receiver.
 184. Injunction.
 185. Referee.
 186. Hearing.
 187. Decision.
 188. Use of original papers on hearing.
 189. Amending papers.
 190. Final orders.
 191. Permanent receiver.
 192. Appointment of director, trustee or other officer or stockholder as receiver.
 193. Certain sales, transfers and judgments void.
 194. Omission, defect or default of receiver.
 195. Exception of certain corporations.

§ 170. Petition for voluntary dissolution of corporation.

If a majority of the directors, trustees, or other officers, having the management of the concerns of a corporation created by or under the laws of the state, discover that the stock, effects, and other property thereof are not sufficient to pay all just demands, for which it is liable, or to afford a reasonable security to those who may deal with it; or if, for any reason, they deem it beneficial to the interests of the stockholders that the corporation should be dissolved, they may present a petition to the supreme court praying for a final order dissolving the corporation, as prescribed in this article.

§ 171. Directors or trustees may be required to petition.

It shall be the duty of a majority of the directors or trustees of every corporation created by or under the laws of this state to present a petition as prescribed in the last section whenever directed so to do by a majority in interest of its stockholders.

§ 172. Petition when directors or trustees do not agree.

If a corporation, created under a general statute of the state for the formation of corporations or under any special act or charter has an even number of trustees or directors who are equally divided respecting the management of its affairs, or if the stock of such corporation is equally divided into not more than two independent ownerships or interests, or if the entire stock of the corporation is, at that time, owned by the trustees or directors who are even in number or equally divided representing the management of its affairs, or if the stock is so divided, that one-half thereof is owned or controlled by persons favoring the course of part of the trustees or directors and one-half thereof is owned by persons favoring the course of the other trustees or directors, the trustees or directors or the stockholders or one or more of them may present a petition as prescribed in section one hundred and seventy of this chapter.

§ 173. Corporations excepted from two preceding sections.

Sections one hundred and seventy-one and one hundred and seventy-two of this chapter do not apply to a savings bank, a trust company, a safe deposit company, or a corporation formed to rent safes in burglar and fire-proof vaults, or for the construction or operation of a railroad, or for aiding in the construction thereof, or for carrying on the business of banking or insurance, or intended to derive a profit from the loan or use of money.

§ 174. Contents of petition.

The petition must show that the case is one of those specified in sections one hundred and seventy and one hundred and seventy-two of this chapter, and must state the reasons, which induce the petitioner or petitioners to desire the dissolution of the corporation.

A schedule must be annexed to the petition, containing the following matters, as far as the petitioner or petitioners know, or have the means of knowing the same:

1. A full and true account of all the creditors of the corporation, and of all unsatisfied engagements, entered into by, and subsisting against, the corporation.

2. A statement of the name and place of residence of each creditor, and of each person with whom such an engagement was made, and to whom it is to be performed, if known; or, if either is not known, a statement of that fact.

3. A statement of the sum owing to each creditor, or other person specified in the last subdivision, and the nature of each debt, demand, or other engagement.

4. A statement of the true cause and consideration of the indebtedness to each creditor.

5. A full, just, and true inventory of all the property of the corporation, and of all the books, vouchers, and securities, relating thereto.

6. A statement of each incumbrance upon the property of the corporation, by judgment, mortgage, pledge, or otherwise.

7. A full, just, and true account of the capital stock of the corporation, specifying the name of each stockholder; his residence, if it is known, or if it is not known, stating that fact; the number of shares belonging to him; the amount paid in upon his shares; and the amount still due thereupon.

Am'd by L. 1909, ch. 240.

§ 175. Affidavit to be annexed to petition.

An affidavit, made by each of the petitioners, to the effect that the matters of fact, stated in the petition and the schedule, are just and true, so far as the affiant knows or has the means of knowing the same, must be annexed to the petition and schedule.

§ 176. Presentation of petition.

The papers must be presented at a special term of the supreme court, held within the judicial district, embracing the county wherein the principal office of the corporation is located.

§ 177. Corporations without stockholders.

In the case of corporations affected by the provisions of this article and not having stockholders, it shall be sufficient for the purposes of this article to notify, name and refer to the "members" of such corporations, instead of "stockholders," as herein provided.

§ 178. Action by court upon petition for dissolution.

In a case specified in sections one hundred and seventy-one and one hundred and seventy-two of this chapter the court may, in its discretion, entertain or dismiss the application. Where it entertains the application, or where the cause is one of those specified in section one hundred and seventy of this chapter, the court must make an order, requiring all persons interested in the corporation to show cause before it, or before a referee designated in the order, at a time and place therein specified, not less than six weeks after the granting of the order, why the corporation should not be dissolved.

Am'd by L. 1909, ch. 240.

§ 179. Publication of order to show cause why corporation should not be dissolved.

A copy of the order must be published, as prescribed therein, at least once in each of the three weeks immediately preceding the time fixed therein for showing cause, in one or more newspapers, specified in the order, published in the city or county wherein the order is entered.

§ 180. Service of order to show cause.

A copy of the order must also be served upon each of the persons, specified in the schedule as a creditor or stockholder of the corporation, or as a person to whom an engagement of the corporation is to be performed, other than a person whose residence is stated to be unknown, or to be without the United States. The service must be made either personally, at least ten days before the time appointed for the hearing; or by depositing a copy of the order, at least twenty days before the time so appointed, in the post-office,

inclosed in a postpaid wrapper, addressed to the person to be served, at his residence, as stated in the schedule.

§ 181. Entering and filing order and papers.

The order must be entered, and the papers must be filed, within ten days after the order is made, with the clerk of the county where the principal office of the corporation is located.

§ 182. Temporary receiver.

If it shall be made to appear to the satisfaction of the court that the corporation is insolvent, the court may at any stage of the proceedings before the final order, on motion of the petitioners on notice to the attorney-general, or on motion of the attorney-general on notice to the corporation, appoint a temporary receiver of the property of the corporation, which receiver shall have all the powers and be subject to all the duties that are defined as belonging to temporary receivers appointed in an action, in section one hundred and four of this chapter. The court may also, in its discretion, at any stage in the proceeding after the appointment of a temporary receiver, upon like motion and notice, confer upon such temporary receiver the powers and authority, and subject him to the duties and liabilities of a permanent receiver, or as much thereof as it thinks proper, except that he shall not make any final distribution among the creditors and stockholders, before final order in the proceedings, unless he is specially directed so to do by the court.

§ 183. Application for appointment of receiver.

Every application made for the appointment of a receiver of a corporation other than applications made by the attorney-general on behalf of the people of the state, shall be made at a special term of the supreme court held in and for the judicial district in which the principal business office of the corporation is located.

§ 184. Injunction.

If a temporary receiver be appointed, the court may, in its discretion, on like motion and notice, with or without security, at any stage of the proceeding before the final order, grant an injunction,

restraining the creditors of the corporation, from beginning any action against the said corporation for the recovery of a sum of money, or from taking any further proceedings in such an action theretofore commenced. Such injunction shall have the same effect and be subject to the same provisions of law as if each creditor upon whom it is served was named therein.

§ 185. Referee.

If a referee was not designated in the order to show cause, the court may, in its discretion, appoint a referee when or after the order is returnable.

§ 186. Hearing.

At the time and place specified in the order, or at the time and place to which the hearing is adjourned, the court, or the referee, must hear the allegations and proofs of the parties, and determine the facts.

§ 187. Decision.

The decision of the court, or the report of the referee, must be in writing, and must be made and filed with all convenient speed. It must contain a statement of the effects, credits, and other property, and of the debts and other engagements, of the corporation, and of all other matters, pertaining to its affairs.

§ 188. Use of original papers on hearing.

The court or the referee is entitled to use, upon the hearing, the original petition, and the schedules annexed thereto; and the clerk must transmit them accordingly, upon the written order of the judge, or of the referee. In that case, they must be returned with the decision or report.

§ 189. Amending papers.

The court may, at any stage of the proceedings before final order, on the application of the petitioners, or a majority of them, or on the application of the temporary receiver, grant an order amending the schedules annexed to the original petition, by the insertion of additional items, or by making the statements or

inventory fuller and in greater detail than as originally filed, with the like effect as though said petition and schedules had been originally presented and filed as amended.

§ 190. Final order.

Where the hearing is before a referee, a motion for a final order must be made to the court, upon notice to each person who has made himself a party to the proceedings, by filing with the clerk, before the close of the hearing, a notice of his appearance, in person or by attorney, specifying a post-office within the state, where such a notice may be served. The notice may be served as prescribed in the code of civil procedure for the service of a paper upon an attorney in an action. Where the hearing was before the court, a motion for a final order may be made immediately, or at such a time and upon such a notice, as the court prescribes.

§ 191. Permanent receiver.

Upon an application for a final order, if it appear to the court in a case specified in section one hundred and seventy of this chapter that the corporation is insolvent, or, in a case specified either in that section, or in section one hundred and seventy-one and one hundred and seventy-two of this chapter, that for any reason a dissolution of the corporation will be beneficial to the interests of the stockholders and not injurious to the public interests, the court must make a final order dissolving the corporation, and appointing one or more receivers of its property. But in the case of a solvent corporation, the court may, if there is no objection by creditors, dispense with a receiver and provide in the final order for the distribution of the assets. The order shall be entered in the office of the clerk of the county in which the principal business office, or the principal place of business of the corporation is located, and a certified copy thereof, if a banking corporation, shall be filed in the office of the superintendent of banks; if an insurance corporation, in the office of the superintendent of insurance; and if a business, transportation, railroad or membership corporation, in the office of the secretary of state. Upon the entry of the order and the filing of a certified copy thereof as herein provided, the corporation is dissolved. A receiver appointed under this section

shall have all the powers, duties and liabilities of receivers under article eleven of this chapter.

Amended by L. 1909, chap. 240, and L. 1916, chap. 53. In effect March 21, 1916.

§ 192. Appointment of director, trustee or other officer or stockholder as receiver.

The court may, in its discretion, appoint a director, trustee, or other officer, or a stockholder of the corporation, a receiver of its property.

§ 193. Certain sales, transfers and judgments void.

A sale, assignment, mortgage, conveyance, or other transfer, of any property of a corporation, made after the filing of a petition as prescribed in this article, in payment of, or as security for, an existing or prior debt, or for any other consideration; or a judgment thereafter rendered against the corporation by confession, or upon the acceptance of an offer, is absolutely void, as against the receiver appointed in the special proceeding, and as against the creditors of the corporation.

§ 194. Omission, defect or default of receiver.

In a proceeding for the voluntary dissolution of a corporation, the court may, in the furtherance of justice, upon notice to the attorney-general, and the attorney-general not objecting, and upon such further notice to creditors or others interested as the court shall direct, which notice may be made by mail upon all persons and corporations not residing or existing within the state, relieve a receiver from any omission, defect or default, in any proceeding or act required by law to be taken or done, or in the giving of any notice required by law to be given, and the court may upon like notice, confirm any act of a receiver, and any decision, report, order or judgment made in such proceeding.

§ 195. Exception of certain corporations.

This article does not apply to an incorporated library society, to a religious corporation, or to a select school or academy, incorporated by the regents of the university or by the legislature, or to a municipal or other political corporation.

ARTICLE 10.

DISSOLUTION OF STOCK CORPORATION WITHOUT JUDICIAL PROCEEDINGS.

SECTION 220. Dissolution of stock corporation before beginning business.

221. Dissolution of stock corporation before expiration of time limit.

§ 220. Dissolution of stock corporation before beginning business.

The incorporators named in any certificate of incorporation filed for the purpose of creating a domestic stock corporation, other than a moneyed or transportation corporation, may, before the payment of any part of the capital, and before beginning business, surrender all corporate rights and franchises, by signing, verifying and filing in the office of the secretary of state and the clerk of the county where the certificate of incorporation is filed, a certificate setting forth the names of the incorporators, that no part of the capital has been paid, that there are no liabilities, that such business has not been begun, and surrendering all rights and franchises; and proof of the facts set forth in such certificate to the satisfaction of the secretary of state; and thereupon the said corporation shall be dissolved, and its corporate existence and power shall cease. In case any incorporator of such a corporation shall be deceased, then the aforesaid certificate may be made by the surviving incorporators providing two years shall have elapsed since the date of its incorporation, but in such case the certificate shall set forth the fact that one or more of said incorporators is deceased.

§ 221. Dissolution of stock corporation before expiration of time limit.

Any stock corporation, except a moneyed or a railroad corporation, may be dissolved before the expiration of the time limited in its certificate of incorporation or in its charter as follows:

1. The board of directors of any such corporation may at a meeting called for that purpose, upon at least three days' notice

to each director, by a vote of a majority of the whole board, adopt a resolution that it is in their opinion advisable to dissolve such corporation forthwith, and thereupon shall call a meeting of the stockholders for the purpose of voting upon a proposition that such corporation be forthwith dissolved. Such meeting of the stockholders shall be held not less than thirty nor more than sixty days after the adoption of such resolution, and the notice of the time and place of such meeting so called by the directors shall be published in one or more newspapers published and circulating in the county wherein such corporation has its principal office, at least once a week for three weeks successively next preceding the time appointed for holding such meeting, and on or before the day of the first publication of such notice, a copy thereof shall be served personally on each stockholder, or mailed to him at his last known post-office address. Such meeting shall be held in the city, town or village in which the last preceding annual meeting of the corporation was held, and said meeting may, on the day so appointed, by the consent of a majority in interest of the stockholders present, be adjourned from time to time, and notice of such adjournment shall be published in the newspapers in which the notice of the meeting is published. If at any such meeting the holders of two-thirds in amount of the stock of the corporation, then outstanding, shall, in person or by attorney, consent that such dissolution shall take place and signify such consent, in writing, then such corporation shall file such consent, attested by its secretary or treasurer, and its president or vice-president, together with the powers of attorney signed by such stockholders executing such consent by attorney, with a statement of the names and residences of the then existing board of directors of said corporation, and the names and residences of its officers duly verified by the secretary or treasurer or president of said corporation, in the office of the secretary of state.

2. The secretary of state shall thereupon issue to such corporation, in duplicate, a certificate of the filing of such papers and that it appears therefrom that such corporation has complied with this section in order to be dissolved, and one of such duplicate certificates shall be filed by such corporation in the office of the

clerk of the county in which such corporation has its principal office; and thereupon such corporation shall be dissolved and shall cease to carry on business, except for the purpose of adjusting and winding up its business. The board of directors shall cause a copy of such certificate to be published at least once a week for two weeks in one or more newspapers published and circulating in the county in which the principal office of such corporation is located, and at the expiration of such publication, the said corporation by its board of directors shall proceed to adjust and wind up its business and affairs with power to carry out its contracts and to sell its assets at public or private sale, and to apply the same in discharge of debts and obligations of such corporation, and, after paying and adequately providing for the payment of such debts and obligations, to distribute the balance of assets among the stockholders of said corporation, according to their respective rights and interests.

3. Said corporation shall nevertheless continue in existence for the purpose of paying, satisfying and discharging any existing debts or obligations, collecting and distributing its assets and doing all other acts required in order to adjust and wind up its business and affairs, and may sue and be sued for the purpose of enforcing such debts or obligations, until its business and affairs are fully adjusted and wound up.

4. After paying or adequately providing for the debts and obligations of the corporation the directors may, with the written consent of the holders of two-thirds in amount of the capital stock, sell the remaining assets or any part thereof to a corporation organized under the laws of this or any other state, and engaged in a business of the same general character, and take in payment therefor the stock or bonds or both of such corporation and distribute them among the stockholders, in lieu of money, in proportion to their interest therein, but no such sale shall be valid as against any stockholder, who, within sixty days after the mailing of notice to him of such sale, shall apply to the supreme court in the manner provided by section seventeen of the stock corporation law, for an appraisal of the value of his interest

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in the assets so sold; unless within thirty days after such appraisal the stockholders consenting to such sale, or some of them, shall pay to such objecting stockholder or deposit for his account, in the manner directed by the court, the amount of such appraisal and upon such payment or deposit the interest of such objecting stockholder shall vest in the person or persons making such payment or deposit.

ARTICLE 10-a.

PROVISIONS APPLICABLE TO TEMPORARY AND PERMANENT
RECEIVERS OF CORPORATIONS.

SECTION 225. Security.

226. Removal or new bond.

227. Notice to sureties upon accounting.

§ 225. Security.

A receiver, appointed in an action or special proceeding, must, before entering upon his duties, execute and file with the proper clerk, a bond to the people, with at least two sufficient sureties, in a penalty fixed by the court, judge, or referee, making the appointment, conditioned for the faithful discharge of his duties as receiver; and the execution of any such bond by any fidelity or surety company authorized by the laws of this state to transact business, shall be equivalent to the execution of said bond by two sureties. But this section does not apply to a case where special provision is made by law for the security to be given by a receiver or for increasing the same.

Added by L. 1909, ch. 240.

§ 226. Removal or new bond.

The court, or, where the order was made out of court, the judge making the order, by or pursuant to which the receiver was appointed, or his successor in office, may, at any time, remove the receiver, or direct him to give a new bond, with new sureties, with the like condition specified in the last section. But this section

does not apply to a case where special provision is made by law for the security to be given by a receiver, or for increasing the same, or for removing a receiver.

Added by L. 1909, ch. 240.

§ 227. Notice to sureties upon accounting.

A receiver who, having executed and filed a bond as provided for in section two hundred and twenty-five or section two hundred and twenty-six of this chapter, before presenting his accounts as receiver, must give notice to the surety or sureties on his official bond, of his intention to present his accounts, not less than eight days before the day set for the hearing on said accounting. The same notice must be given to such surety or sureties where the accounting is ordered on the petition of a person or persons other than the receiver, and in no case shall the receiver's accounts be passed, settled or allowed, unless the said notice provided for in this section shall have first been given to the surety or sureties on the official bond of such receiver.

Added by L. 1909, ch. 240.

ARTICLE 11.

POWERS, DUTIES AND LIABILITIES OF RECEIVERS OF CORPORATION.

SECTION 230. Application of this article.

- 231. Receiver trustee of property.
- 232. Receiver's title to property.
- 233. Transfer of assets of corporation to receiver.
- 234. Security of receiver.
- 235. Authority of single receiver.
- 236. Authority where there is more than one receiver.
- 237. Surviving receivers.
- 238. Oath of receiver.
- 239. General powers of receivers.
- 240. Power of receiver to institute proceedings to recover assets.
- 241. Power of receiver in the settlement of controversies.
- 242. Power of receiver to employ counsel.
- 243. Power of receiver to hold real property.
- 244. Power of receiver to recover stock subscriptions.
- 245. Duty of receiver to convert assets into money.
- 246. Duty of receiver as to private sales.
- 247. Duty of receiver to keep accounts.

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SECTION 248. Duty of receiver to serve copy of report upon attorney-general and superintendent of banks.

249. Duty of certain receivers to make reports.

250. Duty of receivers to give notice to creditors.

251. Delivery of property and payment of debts to receiver after notice.

252. Penalty for concealing property from receiver.

253. Duty of receiver to call creditors' meeting.

254. Proceedings at creditors' meeting.

255. Deduction of disbursements and commissions by receiver.

256. Refunding consideration of subsisting contracts.

257. Retention of funds for subsisting contracts and pending suits.

258. Payment of debts not due.

259. Allowance of set-offs.

260. Penalties recovered by receiver.

261. Order of payment by receiver.

262. Failure to file claim before first dividend.

263. Second dividend by receiver.

264. Surplus to stockholders.

265. Disposition of moneys retained by receiver for suits.

266. Duty of receiver as to unclaimed dividend.

267. Effect of failure to file claim before second dividend.

268. Final accounting by receiver.

269. Notice of final accounting.

270. Hearing on final accounting.

271. Reference of final account.

272. Further accounting.

273. Removal of receiver.

274. Vacancy.

275. Renunciation by receiver.

276. Control of receiver by court.

277. Commissions and expenses of receiver in voluntary dissolution.

278. Commissions and expenses of receiver except in voluntary dissolution.

§ 230. Application of this article.

Unless otherwise provided the provisions of this article shall apply only to permanent receivers appointed pursuant to section one hundred and six or section one hundred and ninety-one of this chapter.

§ 231. Receiver trustee of property.

Permanent receivers shall be trustees of the property for the benefit of the creditors of the corporation and of its stockholders.

§ 232. Receiver's title to property.

Such receivers shall, from the time of their having filed the security required by law, be vested with all the property, real or personal, vested or contingent of the corporation.

Am'd by L. 1909, ch. 240, and L. 1913, ch. 766.

§ 233. Transfer of assets of corporation to receiver.

In all cases where receivers have been or shall be appointed for any corporation of this state other than an insurance company on application by the attorney-general, all property, real and personal, and all securities of every kind and nature belonging to such corporation, no matter where located or by whom held, shall be transferred to, vested in and held by such receiver; provided, however, that such transfer shall only be made when directed by an order of the supreme court, due notice of the application for such order having been made on the attorney-general and the custodian of the funds, securities or property.

§ 234. Security of receiver.

Before entering upon the duties of their appointment, such receivers shall give such security to the people of the state, and in such penalty, as the court shall direct, conditioned for the faithful discharge of the duties of their appointment, and for the due accounting for all moneys received by them.

§ 235. Authority of single receiver.

When one receiver only, shall be appointed, all the provisions herein contained, in reference to several receivers shall apply to him.

§ 236. Authority where there is more than one receiver.

When there are more receivers than one appointed, the debts and property of the corporation may be collected and received by any one of them; and when there are more than two receivers appointed, every power and authority conferred on the receivers may be exercised by any two of them.

§ 237. Surviving receivers.

The survivor or survivors of any receivers shall have all the powers and rights given to receivers. All property in the hands of any receiver at the time of his death, removal or incapacity, shall be delivered to the remaining receiver or receivers, if there be any; or to the successor of the one so dying, removed or incapacitated; who may demand and sue for the same.

§ 238. Oath of receiver.

Before proceeding to the discharge of any of their duties, all such receivers shall take and subscribe an oath, that they will well and truly execute the trust by their appointment reposed in them, according to the best of their skill and understanding; which oath shall be filed with the officer or court, that appointed them.

§ 239. General powers of receivers.

The said receivers shall have power:

1. To sue in their own names or otherwise, and recover all the property, debts and things in action, belonging or due or to become due to such corporation, whether accruing or maturing before or after the dissolution thereof and whether vested or contingent at the time of such dissolution, in the same manner and with the like effect as such corporation might or could have done if no receivers had been appointed; and no set-off shall be allowed in any such suit, for any debt, unless it was owing to such creditor by such corporation before the appointment of the receiver of such corporation, or unless it shall have been duly contracted by such receiver subsequent to his appointment; notwithstanding the notice to creditors the receivers may sue for and recover any property or effects of the corporation and any debts due to it, at any time, before the day appointed for the delivery or payment thereof;

2. To take into their hands, all the property of such corporation, whether attached, or delivered to them, or afterwards discovered; and all books, vouchers and securities relating to the same;

3. In the case of a non-resident, absconding or concealed debtor, to demand and receive of every sheriff who shall have attached any of the property of such debtor, or who shall have in his hands, any moneys arising from the sale of such property, all such property and moneys, on paying him his reasonable costs and charges, for attaching and keeping the same, to be allowed by the court having jurisdiction;

4. From time to time, to sell at public auction, all the property, real and personal, vested in them, which shall come to their hands, after giving at least fourteen days' public notice of the time and place of sale, and also publishing the same for two weeks in a newspaper, printed in the county, where the sale shall be made, if there be one;

5. To allow such credit on the sale of real property by them, as they shall deem reasonable, subject to the provisions of this article for not more than three-fourths of the purchase money; which credit shall be secured by a bond of the purchaser, and a mortgage on the property sold;

6. On such sales, to execute the necessary conveyances and bills of sale.

7. To redeem all mortgages and conditional contracts and all pledges of personal property, and to satisfy any judgments, which may be an incumbrance on any property so sold by them; or to sell such property subject to such mortgages, contracts, pledges or judgments;

8. To settle all matters and accounts between such corporation and its debtors, or creditors, and to examine any person touching such matters and accounts, on oath, to be administered by either of them;

9. Under the order of the court appointing them, to compound with any person indebted to such corporation and thereupon to discharge all demands against such person.

Amended by L. 1913, chap. 766.

§ 240. Power of receiver to institute proceedings to recover assets.

Whenever any receiver of a domestic corporation, or of the property within this state of any foreign corporation, shall have been appointed and qualified, as provided in articles five, six, seven, nine, eleven or twelve of this chapter either before, upon, or after final judgment or order in the action or special proceeding in which such appointment was made, and shall, by his own verified petition, affidavit or other competent proof, show to the supreme court, at a special term thereof, held within the judicial district wherein such appointment was made, that he has good reason to believe that any officer, stockholder, agent or employee of such corporation, or any other person whomsoever, has embezzled or concealed, or withholds or has in his possession or under his control, or has wrongfully disposed of, any property of such corporation which of right ought to be surrendered to the receiver thereof; or that any person can testify concerning the embezzlement, concealment, withholding, possession, control or wrongful disposition of any such property, the court shall make an order, with or without notice, commanding such person or persons to appear at a time and place to be designated in the order, before the court or before a referee named by the court for that purpose, and to submit to an examination concerning such embezzlement, concealment, withholding, possession, control or wrongful disposition of such property; and at the time of making such order or at any time thereafter, the court may, in its discretion, enjoin and restrain the person or persons so ordered to appear and be examined from in any manner disposing of any property of such corporation which may be in the possession or under the control of the person so ordered to be examined; until the further order of the court in relation thereto. No person so ordered to appear and be examined shall be excused from answering any question on the ground that his answer might tend to convict him of a criminal offense; but his testimony taken upon such examination shall not be used against him in any criminal action or proceeding.

Any person so ordered to appear and be examined shall be entitled to the same fees and mileage, to be paid at the time of

serving the order, as are allowed by law to witnesses subpoenaed to attend and testify in an action in the supreme court, and shall be subject to the same penalties upon failure to appear and testify in obedience to such an order as are provided by law in the case of witnesses who fail to obey a subpoena to appear and testify in an action.

Any person appearing for examination in obedience to such order shall be sworn by the court or referee to tell the truth, and shall be entitled to be represented on such examination by counsel, and may be cross-examined, or may make any voluntary statement in his own behalf concerning the subject of his examination which may seem to him desirable or pertinent thereto.

The court before which such examination is taken, as well as the referee, if one be appointed for that purpose, shall have power to adjourn such examination from time to time, and may rule upon any question or objection arising in the course of such examination, to the same extent that might be done if the person so examined were testifying as a witness in the trial of an action.

When the examination of any person under such order shall be concluded, the testimony shall be signed and sworn to by the person so examined, and shall be filed in the office of the clerk of the county where the action is pending, or was tried, in which the receiver was appointed; and if from such testimony it shall appear to the satisfaction of the court that any person so examined is wrongfully concealing or withholding, or has in his possession or under his control, any property which of right belongs to such receiver, the court may make an order commanding the person so examined forthwith to deliver the same to such receiver, who shall hold the same subject to the further order of the court in relation thereto; and otherwise, the court may, at the conclusion of any such examination, make such final order in the premises as the interests of justice require.

§ 241. Power of receiver in the settlement of controversies.

If any controversy shall arise between the receivers and any other person, in the settlement of any demands against such corporation, or of debts due to such corporation the same may be

referred to one or more indifferent persons, who may be agreed upon by the receivers and the party, with whom such controversy shall exist, by a writing to that effect, signed by them.

If such referee or referees be not selected by agreement, then the receivers or the other party to the controversy, provided no action at law is pending arising out of any such debts or demands, may serve a notice of their intention to apply to any judge of the supreme court at chambers, residing in the same district with said receivers, for the appointment of one or more referees, specifying the time and place when such application will be made, which notice shall be served at least ten days before the time so therein specified.

On the day so specified, upon due proof of the service of such notice, the judge before whom the application is made may, in his discretion, proceed to select one or more referees, the same in all respects as they are now selected according to the rules and practice of the supreme court.

When any witness to such controversy shall reside out of the county where the said receivers resided at the time of their appointment, the referee or referees appointed to hear said controversy shall have power to issue a commission or commissions in like manner as justices of the peace are now authorized to issue the same, and the testimony so taken shall be returned to said referee or referees in the same manner, and be read before them on a hearing, in like manner as testimony taken on commission before justices of the peace.

The officer before whom they shall be selected, shall certify such selection in writing. Such certificate, or the written agreement of the parties, shall be filed by the receivers in the office of a clerk of the supreme court, and an order shall thereupon be entered by such clerk in vacation or in term, appointing the persons so selected to determine the controversy.

Such referees shall have the same powers, and be subject to the like duties and obligations, and shall receive the same compensation, as referees appointed by the supreme court, in personal actions pending therein.

The report of the referees shall be filed in the same office where the order for their appointment was entered, and shall be conclusive on the rights of the parties, if not set aside by the court.

§ 242. Power of receiver to employ counsel.

If the receiver of a corporation employs counsel he shall within three months after he has qualified as receiver enter into a written contract fixing the compensation of such counsel at not exceeding a certain amount or a certain percentage of the sums received and disbursed by him, which contract must be approved by the supreme court, on at least eight days' notice to the attorney-general. A payment by such receiver to his counsel on account of services shall only be made, pursuant to an order of the court, on notice to the attorney-general and subject to review on the final accounting. A contract with counsel shall not be made for a longer period than eighteen months, but may be renewed from time to time for periods of not more than one year, if approved by the supreme court on at least eight days' notice to the attorney-general. In case of the intervention of any policy-holder or depositor, by permission of the court, such policy-holder or depositor shall defray the legal expenses thereof, and no allowance shall be made for costs or fees to any attorney of such policy-holder or depositor. It shall be unlawful for receivers of an insurance, banking or railroad corporation, or trust company to pay to any attorney or counsel any costs, fees or allowances until the amounts thereof shall have been stated to the special term as provided in section two hundred and forty-nine of this chapter, as expenses incurred, and shall have been approved by that court, by an order of the court duly entered; and any such order shall be the subject of review by the appellate division and the court of appeals on an appeal taken therefrom by any party aggrieved thereby.

§ 243. Power of receiver to hold real property.

A receiver, appointed by or pursuant to an order or a judgment, in an action in the supreme court or a county court, or in a special proceeding for the voluntary dissolution of a corporation, may take and hold real property, upon such trusts and for such purposes as the court directs, subject to the direction of the court, from time to time, respecting the disposition thereof.

§ 244. Power of receiver to recover stock subscriptions.

If there shall be any sum remaining due upon any share of stock subscribed in such corporation, the receiver shall immediately proceed to recover the same, unless the person so indebted shall be wholly insolvent; and for that purpose may commence and prosecute any action or proceeding for the recovery of such sum, without the consent of any creditors of such corporation.

§ 245. Duty of receiver to convert assets into money.

The receivers shall, as speedily as possible, convert the property, real and personal, of the corporation into money.

§ 246. Duty of receiver as to private sales.

A receiver duly appointed in this state by and pursuant to a judgment in an action, or by and pursuant to an order in a special proceeding, may, upon application to the court by which such judgment was rendered, or such order was made, and upon notice to such parties as may be entitled to notice of applications made in such action or special proceeding, be authorized by the said court to sell or convey the property, whether real or personal, of the corporation of which he is the receiver, at private sale, upon such terms and conditions as the court may direct.

§ 247. Duty of receiver to keep accounts.

They shall keep a regular account of all moneys received by them as receivers; to which, every creditor, or other person interested therein, shall be at liberty, at all reasonable times, to have recourse.

§ 248. Duty of receiver to serve copy of report upon attorney-general and superintendent of banks.

All receivers of insolvent corporations who are required by law to make and file reports of their proceedings shall at the time of making and filing such reports, serve a copy thereof upon the attorney-general of this state, and receivers of such corporations as report to, and are under the supervision of, the banking department shall on the first day of January and July of each year,

during the continuance of their respective trusts, file with the superintendent of banks a report, verified by oath, in such form as the superintendent may prescribe, showing the condition of their respective trusts. In case any receiver of an insolvent corporation shall neglect to make and file a report of his proceedings for thirty days after the time he is required by law to make and file such report, or shall neglect for the same length of time to serve a copy thereof on the attorney-general, as required by this section the attorney-general may make a motion in the supreme court for an order to compel the making and filing and serving a copy on him of such report, or for the removal of such receiver from his office.

§ 249. Duty of certain receivers to make reports.

It shall be the duty of every receiver of an insurance, banking or railroad corporation, or trust company, to present every six months to the special term of the supreme court, held in the judicial district wherein the place of trial or venue of the action or special proceeding in which he was appointed may then be, on the first day of its first sitting, after the expiration of such six months, and to file a copy of the same, if a receiver of a bank or trust company, with the superintendent of banks; if a receiver of an insurance company, with the superintendent of insurance; and in each case with the attorney-general, an account exhibiting in detail the receipts of his trust, and the expenses paid and incurred therein during the preceding six months. Of the intention to present such account, as aforesaid, the attorney-general, and also the surety or sureties on the official bond of such receiver, shall be given eight days' notice in writing; and the attorney-general shall examine the books and accounts of such receiver at least once every twelve months.

§ 250. Duty of receivers to give notice to creditors.

The receivers, immediately upon their appointment, shall give notice thereof which shall be published for three weeks in a newspaper printed in the county where the principal place of conducting the business of such corporation shall have been situated; and therein shall require,

1. All persons indebted to such corporation, by a day and at a place therein to be specified, to render an account of all debts and sums of money owing by them respectively, to such receivers and to pay the same.

2. All persons having in their possession any property or effects of such corporation to deliver the same to the said receivers by the day so appointed.

3. All the creditors of such corporation to deliver their respective accounts and demands to the receivers or one of them, by a day to be therein specified, not less than forty days from the first publication of such notice.

4. All persons holding any open or subsisting contract of such corporation, to present the same in writing and in detail to such receivers, at the time and place in such notice specified.

§ 251. Delivery of property and payment of debts to receiver after notice.

After the first publication of the notice of the appointment of receivers, every person having possession of any property belonging to such corporation, and every person indebted to such corporation, shall account and answer for the amount of such debt and for the value of such property to the said receivers.

§ 252. Penalty for concealing property from receiver.

Every person indebted to such corporation, or having the possession or custody of any property or thing in action, belonging to it, who shall conceal the same, and not deliver a just and true account of such indebtedness, or not deliver such property or thing in action, to the receivers, or one of them, by the day for that purpose appointed, shall forfeit double the amount of such debt, or double the value of such property so concealed; which penalties may be recovered by the receivers.

§ 253. Duty of receiver to call creditors' meeting.

They shall call a general meeting of the creditors of such corporation, within four months from the time of their appointment by a notice to be published in the same manner, as herein-

before directed respecting the publication of the notice of their appointment; in which notice, they shall specify the place and time of such meeting, which time shall not be more than three months, nor less than two months after the first publication of such notice. Every such notice shall be published at least once in each week, until the time of such meeting.

§ 254. Proceedings at creditors' meeting.

At such meeting, or other adjourned meeting thereafter, all accounts and demands for and against such corporation, and all its open and subsisting contracts, shall be ascertained and adjusted as far as may be, and the amount of moneys in the hands of the receivers declared.

§ 255. Deduction of disbursements and commissions by receiver.

Out of the moneys in their hands the receivers may first deduct all the necessary disbursements made by them in the discharge of their duty and such commissions as may be allowed by law.

§ 256. Refunding consideration of subsisting contracts.

If there shall be any open and subsisting engagements or contracts of such corporation, which are in the nature of insurances or contingent engagements of any kind, the receivers may, with the consent of the party holding such engagement, cancel and discharge the same, by refunding to such party the premium or consideration paid thereon by such corporation, or so much thereof as shall be in the same proportion to the time which shall remain of any risk assumed by such engagement, as the whole premium bore to the whole term of such risk; and upon such amount being paid by such receivers to the person holding or being the legal owner of such engagement, it shall be deemed canceled and discharged as against such receivers.

§ 257. Retention of funds for subsisting contracts and pending suits.

The receivers shall retain out of the moneys in their hands, a sufficient amount to pay the sums, which they are hereinbefore

authorized to pay, for the purpose of canceling and discharging any open or subsisting engagements. If any suit be pending against the corporation or against the receivers, for any demand, the receivers may retain the proportion which would belong to such demand if established, and the necessary costs and proceedings, in their hands, to be applied according to the event of such suit, or to be distributed in a second or other dividend.

§ 258. Payment of debts not due.

Every person to whom a corporation shall be indebted on a valuable consideration, for any sum of money not due at the time of such distribution, but payable afterwards, shall receive his proportion with other creditors, after deducting a rebate of legal interest upon the sum distributed, for the time unexpired of such credit.

§ 259. Allowance of set-offs.

Where mutual credit has been given by any corporation, and any other person, or mutual debts have subsisted between such corporation and any other person, the receivers may set off such credits or debts, and pay the proportion or receive the balance due. But no set-off shall be allowed of any claim or debt, which would not have been entitled to a dividend, as hereinbefore directed.

No set-off shall be allowed by such receivers, of any claim or debt, which shall have been purchased by, or transferred to, the person claiming its allowance, which could not have been set off by him, in a suit brought by such receivers.

§ 260. Penalties recovered by receiver.

All penalties which shall be recovered by any receivers, pursuant to the provisions of this article, shall be deemed a part of the property of the corporation, and shall be distributed as such among its creditors.

§ 261. Order of payment by receiver.

The receivers shall distribute the residue of the moneys in their hands, among all those who shall have exhibited their claims as creditors, and whose debts shall have been ascertained, as follows:

1. All debts due by such corporation to the United States, and all debts entitled to a preference under the laws of the United States.

2. All debts that may be owing by the corporation as guardian, executor, administrator or trustee; and if there be not sufficient to pay all debts of the character above specified, then a distribution shall be made among them, in proportion to their amounts respectively.

3. Judgments actually obtained against such corporation, to the extent of the value of the real estate on which they shall respectively be liens.

4. All other creditors of such corporation, in proportion to their respective demands, without giving any preference to debts due on specialties.

§ 262. Failure to file claim before first dividend.

Every creditor who shall have neglected to exhibit his demand before the first dividend, and who shall deliver his account to the receivers before the second dividend, shall receive the sum he would have been entitled to on the first dividend, before any distribution be made to the other creditors.

§ 263. Second dividend by receiver.

If the whole of the property of such corporation be not distributed on the first dividend, the receivers shall, within one year thereafter, make a second dividend of all the moneys in their hands, among the creditors entitled thereto; of which, and that the same will be a final dividend, three weeks' notice shall be inserted once in each week in a newspaper printed in the county where the principal place of business of such corporation was situated.

Such second dividend shall be made in all respects in the same manner as herein prescribed in relation to the first dividend, and no other shall be made thereafter among the creditors of such corporation, except to the creditors having suits against it, or against the receivers, pending at the time of such second dividend, and

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except of the moneys which may be retained to pay such creditors, as herein provided.

§ 264. Surplus to stockholders.

If after the second dividend is made, there shall remain any surplus in the hands of the receivers, they shall distribute the same among the stockholders of such corporation, in proportion to the respective amounts paid in by them, severally, on their shares of stock.

§ 265. Disposition of moneys retained by receiver for suits.

When any suit pending at the time of the second dividend shall be terminated, they shall apply the moneys retained in their hands for that purpose, to the payment of the amount recovered, and their necessary charges and expenses; and if nothing shall have been recovered, they shall distribute such moneys, after deducting their expenses and costs, among the creditors and stockholders of the corporation, in the same manner as herein directed in respect to a second dividend.

§ 266. Duty of receiver as to unclaimed dividend.

If any dividend that shall have been declared, shall remain unclaimed by the person entitled thereto for one year after the same was declared, the receivers shall consider it as relinquished, and shall distribute it, on any subsequent dividend, among the other creditors.

§ 267. Effect of failure to file claim before second dividend.

After such second dividend shall have been made, the receivers shall not be answerable to any creditor of such corporation, or to any person having claims against such corporation, by virtue of any open or subsisting engagement, unless the demands of such creditor shall have been exhibited, and the engagements upon which such claims are founded, shall have been presented to the said receivers, in detail and in writing, before or at the time specified by them in their notice of a second dividend.

§ 268. Final accounting by receiver.

A receiver shall apply within one year after qualifying as such for a final settlement of his accounts and an order for distribution, or shall apply to the court upon notice to the attorney-general for an extension of time, setting forth the reasons why he is unable to close his accounts, which order may be granted in the discretion of the court. The attorney-general or any creditor, or any party interested, may apply for an order that the receiver show cause why an accounting and distribution shall not be had at any time after the expiration of one year after the receiver qualifies; and it shall be the duty of the attorney-general after the expiration of eighteen months from the time the receiver enters upon his duties, in case he has not applied for a final settlement of his accounts, to apply for such an order on notice to such receiver. In case of such application by a party other than the receiver the court shall direct the receiver to take steps to account with all convenient speed. The receiver is not required or authorized to file any account, except as herein provided, except by special order of the court.

§ 269. Notice of final accounting.

Previous to rendering such account the receivers shall insert a notice of their intention to present the same, once in each week, for three weeks, in a newspaper, of the county in which notices of dividends are herein required to be inserted, specifying the time and place at which such account will be rendered. Said receivers shall also give notice to the sureties on their official bonds, as provided in section two hundred and twenty-seven of this chapter.

Am'd. by L. 1909, ch. 240.

§ 270. Hearing on final accounting.

Upon the coming in of such report, the court shall hear the allegations of all concerned therein, and shall allow or disallow such account, and decree the same to be final and conclusive upon all the creditors of such corporation, upon all persons who have claims

§§ 271-275. GENERAL CORPORATION LAW.

against it, upon any open or subsisting engagement, and upon all the stockholders of such corporation.

§ 271. Reference of final account.

The referee to whom such account shall be referred, shall hear and examine the proofs, vouchers and documents offered for or against such account, and shall report thereon fully to the court.

§ 272. Further accounting.

Such receivers shall also account from time to time in the same manner, and with the like effect, for all moneys which shall come to their hands after the rendering of such account, and for all moneys which shall have been retained by them for any of the purposes hereinbefore specified, and shall pay into court all unclaimed dividends.

§ 273. Removal of receiver.

Such receivers may be removed by the court.

§ 274. Vacancy.

Any vacancy created by removal, death or otherwise, may be supplied by the court.

§ 275. Renunciation by receiver.

Any receiver who shall be desirous of renouncing the trust vested in him, may apply to the court from whom his appointment was received, for an order to all persons interested, to show cause why such renunciation should not be accepted.

Such application shall be accompanied by a full, true and just account of all the transactions of such receiver, and particularly of the property, moneys and effects received by him; of all payments made, whether to creditors or otherwise; and of the remaining effects and property of the corporation, in respect to which he was appointed receiver, within his knowledge, and the situation of the same.

To such account shall be annexed the affidavit of the receiver, that the said account is in all respects just and true, according to the best of his knowledge and belief; which affidavit shall be subscribed and sworn to, before the court, to whom the application is made, and shall be certified by the clerk of the court.

Such court, shall thereupon grant an order, directing notice to be given to all persons interested in the property of the corporation, in respect to which such receiver was appointed, to show cause on a day or at a term and at a place therein to be specified, why he should not be permitted to renounce his appointment.

Such notice shall be published, once in each week, for six weeks successively in such newspapers, as such court shall direct.

On the day appointed for such hearing, and on such other days as shall from time to time be appointed, if it shall appear that notice was duly published, the court shall proceed to hear the proofs and allegations of the parties.

If it shall appear that the proceedings of such receiver, in relation to his trust, have been fair and honest, and particularly in the collection of the property and debts vested in him; and if such court be satisfied that for any reason it is inexpedient for such receiver to continue in the execution of the duties of his appointment, and that such duties can be executed by another receiver, without injury to the property of the corporation, or to the creditors; and if no good cause to the contrary appear, such court shall grant an order, allowing such receiver to renounce his appointment.

Upon such order being granted, such receiver shall be discharged from the trust reposed in him, and his power and authority shall thereupon cease; but he shall, notwithstanding, remain subject to any liability he may have incurred, at any time previous to the granting of such order, in the management of his trust.

The expense of all proceedings in effecting such renunciation shall be paid by the receiver making the application.

§ 276. Control of receiver by court.

The receivers shall be subject to the control of the court and may be compelled to account at any time.

§ 277. Commissions and expenses of receiver in voluntary dissolution.

A receiver appointed pursuant to article nine is entitled, in addition to his necessary expenses, to commissions upon the sums received and disbursed by him as the court by which or the judge by whom he is appointed allows, as follows: On the first twenty thousand dollars not exceeding five per centum; on the next eighty thousand dollars, not exceeding two and one-half per centum; and on the remainder, not exceeding one per centum; but in case the commissions of a receiver so computed shall not amount to one hundred dollars, said court or judge may in his or its discretion allow said receiver such a sum not exceeding one hundred dollars for his commissions as shall be commensurate with the services rendered by said receiver.

§ 278. Commissions and expenses of receiver except in voluntary dissolution.

A receiver of a corporation, except a receiver appointed in proceedings for its voluntary dissolution, is entitled, in addition to his necessary expenses, to such commissions, not exceeding two and one-half per centum upon the sums received and disbursed by him, as the court by which or the judge by whom he is appointed allows, but except upon a final accounting such a receiver shall not receive on account of his services for any one year a greater amount than twelve thousand dollars, nor for any period less than a year more than at that rate. Upon final accounting, the court may make an additional allowance to such receiver, not exceeding two and one-half per centum upon the sums received and disbursed by him, if the court is satisfied that he has performed services that fairly entitle him to such additional allowance. Where more than one receiver shall be appointed, the compensation herein provided shall be divided between said receivers.

ARTICLE 12.

PROVISIONS APPLICABLE TO TWO OR MORE OF THE FOREGOING
PROCEEDINGS OR ACTIONS.

SECTION 300. Application of preceding articles to certain corporations.

301. Officers and agents may be compelled to testify in certain actions.
302. Injunction staying actions by creditors in certain actions.
303. Creditors of corporation may be brought in to prove their claims in certain actions.
304. When attorney-general must bring certain actions.
305. Requisites of injunction against corporations in certain cases.
306. Appointment of receivers of property of corporations.
307. Judicial suspension or removal of officer of corporation.
308. Application of the last three sections.
309. Misnomer not available in action against stockholder.
310. Appraisal of property of insolvent corporation.
311. Application by attorney-general for removal of receiver and to facilitate closing affairs of receivership.
312. Service of papers upon attorney-general.
313. Designation of depositories of funds in order appointing receiver.
314. Application to the court in certain actions and proceedings.
315. County wherein action may be brought by attorney-general on behalf of the people.
316. Preferences in actions *of proceedings by or against receivers.

§ 300. Application of preceding articles to certain corporations.

Articles fifth, sixth or seventh of this chapter do not apply to a religious corporation; or to a municipal or other political corporation, created by the constitution, or by or under the laws of this state; or to any corporation which the regents of the university have power to dissolve, except upon the application of the regents, or of the trustees of such a corporation; and in aid of its liquidation under such dissolution.

* So in original.

§ 301. Officers and agents may be compelled to testify in certain actions.

In an action, brought as prescribed in article fifth, sixth or seventh, a stockholder, officer, alienee, or agent of a corporation, is not excused from answering a question, relating to the management of the corporation, or the transfer or disposition of its property, on the ground that his answer may expose the corporation to a forfeiture of any of its corporate rights, or will tend to convict him of a criminal offense, or to subject him to a penalty or forfeiture. But his testimony shall not be used, as evidence against him, in a criminal action or special proceeding.

§ 302. Injunction staying actions by creditors in certain actions.

In such an action, the court may, in its discretion, on the application of either party, at any stage of the action, before or after final judgment, and with or without security, grant an injunction order, restraining the creditors of the corporation from bringing actions against the defendants, or any of them, for the recovery of a sum of money, or from taking any further proceedings in such actions, theretofore commenced. Such an injunction has the same effect, and, except as otherwise expressly prescribed in this section, is subject to the same provisions of law, as if each creditor, upon whom it is served, was named therein, and was a party to the action in which it is granted.

§ 303. Creditors of corporation may be brought in to prove their claims in certain actions.

In such an action, the court may, at any stage of the action, before or after final judgment, make an order requiring all the creditors of the corporation to exhibit and prove their claims, and thereby make themselves parties to the action, in such a manner, and in such a reasonable time, not less than six months from the first publication of notice of the order as the court directs; and that the creditors, who make default in so doing, shall be pre-

cluded from all benefit of the judgment, and from any distribution which may be made thereunder, except as hereinafter provided. Notice of the order must be given by publication, in such newspapers, and for such a length of time, as the court directs. Notwithstanding such order any such creditor who shall exhibit and prove his claim in the manner directed thereby, with proof, by affidavit or otherwise, that he has had no notice or knowledge thereof in time to comply therewith, any time before an order is made directing a final distribution of the assets of such corporation, shall be entitled to have his claim received, and shall have the same rights and benefits thereon, so far as the assets of such corporation then remaining undistributed may render possible, as if his claim had been exhibited and proved within the time limited by such order.

§ 304. When attorney-general must bring certain actions.

Where the attorney-general has good reason to believe, that an action can be maintained in behalf of the people of the state, as prescribed in articles fifth, sixth or seventh of the chapter, except section one hundred and thirty of this chapter, he must bring an action accordingly, or apply to a competent court for leave to bring an action, as the case requires; if, in his opinion, the public interests require that an action should be brought. In a case where the action can be brought only by the attorney-general in behalf of the people, if a creditor, stockholder, director, or trustee of the corporation, applies to the attorney-general for that purpose, and furnishes the security required by law, the attorney-general must bring the action, or apply for leave to bring it, if he has good reason to believe, that it can be maintained. Where such an application is made section nineteen hundred and eighty-six of the code of civil procedure applies thereto, and to the action brought in pursuance thereof.

§ 305. Requisites of injunction against corporations in certain cases.

An injunction order, suspending the general and ordinary business of a corporation, or suspending from office, or restraining

from the performance of his duties, a trustee, director, or other officer thereof, can be granted only by the court, upon notice of the application therefor, to the proper officer of the corporation, or to the trustee, director, or other officer enjoined. If such an injunction order is made, otherwise than as prescribed in this section, it is void.

§ 306. Appointment of receivers of property of corporations.

A receiver of the property of a corporation can be appointed only by the court, and in one of the following cases:

1. An action, brought as prescribed in articles fifth, sixth or seventh of this chapter.

2. An action brought for the foreclosure of a mortgage upon the property, of which the receiver is appointed, where the mortgage debt, or the interest thereupon, has remained unpaid, at least thirty days after it was payable, and after payment thereof was duly demanded of the proper officer of the corporation and where either the income of the property is specifically mortgaged, or the property itself is probably insufficient to pay the mortgage debt.

3. An action brought by the attorney-general, or by a stockholder, to preserve the assets of a corporation, having no officer empowered to hold the same.

4. A special proceeding for the voluntary dissolution of a corporation.

5. Upon the application of the regents of the university, in aid of the liquidation of a corporation whose dissolution they contemplate or have decreed; or upon the application of the trustees of such a corporation, with notice to the regents.

Where the receiver is appointed in an action, otherwise than by or pursuant to a final judgment, notice of the application for his appointment must be given to the proper officer of the corporation.

§ 307. Judicial suspension or removal of officer of corporation.

A trustee, director, or other officer of a corporation shall not be suspended or removed from office, by a court or judge, otherwise than by the final judgment of a competent court, in an action brought by the attorney-general, as prescribed in section ninety of this chapter.

§ 308. Application of the last three sections.

The last three sections apply to an action or special proceeding, against a corporation created by or under the laws of the state, or a trustee, director, or other officer thereof; or against a corporation created by or under the laws of another state, government, or country, or a trustee, director, or other officer thereof, where the corporation does business within the state, or has, within the state, a business agency or a fiscal agency, or an agency for the transfer of its stock.

§ 309. Misnomer not available in action against stockholder.

Where an action, authorized by a law of the state, is brought against one or more persons, as stockholders of a corporation, an objection to any of the proceedings can not be taken, by a person properly made a defendant in the action on the ground that the plaintiff has joined with him, as a defendant in the action, a person, whose name appears on the stock-books of the corporation, as a stockholder thereof, by the name so appearing; but who is misnamed, or dead, or is not liable for any cause. In such a case, the court may, at any time before final judgment, upon motion of either party, amend the pleadings and other papers, without prejudice to the previous proceedings, by substituting the true name of the person intended, or by striking out the name of the person who is dead, or not liable, and, in a proper case, inserting the name of his representative or successor.

§ 310. Appraisal of property of insolvent corporation.

Whenever by reason of the provisions of any law of this state it shall become necessary to appraise in whole or in part the

property of any corporation in the hands of a receiver or otherwise, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time.

§ 311. Application by attorney-general for removal of receiver and to facilitate closing affairs of receivership.

The attorney-general may, at any time he deems that the interests of the stockholders, creditors, policy-holders, depositors or other beneficiaries interested in the proper and speedy distribution of the assets of any insolvent corporation will be subserved thereby, make a motion in the supreme court at a special term thereof, in any judicial district:

1. For an order removing the receiver of any insolvent corporation and appointing a receiver thereof in his stead, or,
2. To compel him to account, or,
3. For such other and additional order or orders as to him may seem proper to facilitate the closing up of the affairs of such receivership, and

Any appeal from any order made upon any motion under this section shall be to the appellate division of the department in which such motion is made.

§ 312. Service of papers upon attorney-general.

A copy of all motions and all motion papers, and a copy of any other application to the court, together with a copy of the order or judgment to be proposed thereon to the court, in every action or proceeding for the dissolution of a corporation or a distribution of its assets, shall, in all cases, be served on the attorney-general,

in the same manner as provided by law for the service of papers on attorneys who have appeared in actions, whether the applications but for this section would be ex parte or upon notice, and no order or judgment granted shall vary in any material respect from the relief specified in such copy, order or judgment, unless the attorney-general shall appear on the return day and shall have been heard in relation thereto; and any order or judgment granted in any action or proceeding aforesaid, without such service of such papers upon the attorney-general, shall be void, and no receiver of any such corporation shall pay to any person any money directed to be paid by any order or judgment made in any such action or proceeding, until the expiration of eight days after a certified copy of such order or judgment shall have been served as aforesaid upon the attorney-general.

§ 313. Designation of depositories of funds in order appointing receiver.

All orders appointing receivers of corporations shall designate therein one or more places of deposit, wherein all funds of the corporation not needed for immediate disbursement shall be deposited and no deposits or investments of such trust funds shall be made elsewhere, except upon the order of the court upon due notice given to the attorney-general.

§ 314. Application to the court in certain actions and proceedings.

All applications to the court shall be made in the judicial district where the principal office of the corporation against which proceedings are taken is located, excepting such applications as are made in actions brought by the attorney-general on behalf of the people of the state, and all such applications shall be made in the judicial district in which the action is triable.

§ 315. County wherein action may be brought by attorney-general on behalf of the people.

An action or proceeding brought by the attorney-general on behalf of the people of the state against any corporation for the

purpose of procuring its dissolution, the appointment of a receiver, or the sequestration of its property, may be brought in any county of the state, to be designated by the attorney-general.

§ 316. Preferences in actions or proceedings by or against receivers.

All actions or other legal proceedings and appeals therefrom or therein brought by or against a receiver of any of the insolvent corporations referred to in this chapter, shall have a preference upon the calendars of all courts next in order to actions or proceedings brought by the people of the state of New York.

ARTICLE 13.

ALTERATION AND REPEAL OF CHARTER OF CORPORATION.

SECTION 320. Alteration and repeal of charter.

321. Conflicting corporate laws.

§ 320. Alteration and repeal of charter.

The charter of every corporation shall be subject to alteration, suspension and repeal, in the discretion of the legislature.

§ 321. Conflicting corporate laws.

If in any corporate law there is or shall be any provision in conflict with any provisions of this chapter or of the stock corporation law, the provisions so conflicting shall prevail, and the provision of this chapter or of the stock corporation law with which it conflicts shall not apply in such a case. If in any such law there is or shall be a provision relating to a matter embraced in this chapter or in the stock corporation law, but not in conflict with it, such provision in such other law shall be deemed to be in addition to the provision in this chapter or in the stock corporation law relating to the same subject-matter, and both provisions shall, in such case, be applicable.

ARTICLE 14.

LAWS REPEALED; CONSTRUCTION; WHEN TO TAKE EFFECT.

SECTION 330. Laws repealed.

331. Construction.

332. When to take effect.

§ 330. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 331. Construction.

Nothing in this chapter shall be construed to impair any right or liability which any existing corporation, its officers, directors, stockholders or creditors may have or be subject to or which any subject to on the date when this chapter takes effect, by virtue of any special act of the legislature creating such corporation or creating or defining any such right or liability, unless such special act is repealed by this chapter or the other general laws hereinbefore mentioned.

§ 332. When to take effect.

This chapter shall take effect immediately.

STOCK CORPORATION LAW.

CHAPTER 61 of 1903.

CHAPTER 59 OF THE CONSOLIDATED LAWS.

- ARTICLE
1. Short title (§ 1).
 2. General provisions (§§ 5-18).
 3. Directors and officers (§§ 25-35).
 4. Stock and stockholders (§§ 50-70).
 5. Laws repealed; when to take effect (§§ 80, 81)

ARTICLE 1.

SHORT TITLE

- SECTION 1. Short title.

§ 1. Short title.

This chapter shall be known as the "Stock Corporation Law."

ARTICLE 2.

GENERAL PROVISIONS.

- SECTION
5. Application of article.
 6. Power to borrow money and mortgage property.
 7. Validating corporate mortgages.
 8. Power to guarantee bonds of other corporations.
 9. *Reorganization upon sale of corporate property.
 10. Contents of plan or agreement.
 11. Sale of property; possession of receiver and suits against him.
 12. Municipalities may assent to plan of readjustment.
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 15. Merger.
 16. Voluntary sale of franchise and property.
 17. Rights of non-consenting stockholders on voluntary sale of franchise and property.
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 19. Issuance of shares of stock without nominal or par value.
 20. Commencement of business; authorized debts.
 21. Taxation.
 22. Increase or reduction of shares or capital.
 23. Amount of capital stock and of shares within meaning of other laws.

* So in original.

§ 5. Application of article.

This article except sections eight, fifteen, sixteen, seventeen and eighteen thereof, shall not apply to moneyed corporations.

§ 6. Power to borrow money and mortgage property.

In addition to the powers conferred by the general corporation law, every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase-money mortgages and mortgages authorized by contracts made prior to May first, eighteen hundred and ninety-one, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation, which consent shall be given either in writing or by vote at a special meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary or an assistant secretary, of the corporation, and shall be filed and recorded in the office of the clerk or register of the county wherein the corporation has its principal place of business. When authorized by like consent, the directors under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation, the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the directors shall from time to time, authorize an increase of capital stock sufficient for that purpose by causing to be filed in the office of the secretary of state, and a duplicate

thereof in the office of the clerk of the county where the principal place of business of the corporation shall be located, a certificate under the seal of the corporation, subscribed and acknowledged by the president and secretary of the corporation setting forth,

1. A copy of such mortgage; or resolution of directors authorizing the issue of such bonds;

2. That the holders of not less than two-thirds of the capital stock of the corporation duly consented to the execution of such mortgage or resolution of directors authorizing the issue of such bonds by such corporation;

3. A copy of the resolution of the directors of the corporation authorizing the increase of the capital stock of the corporation necessary for the purpose of such conversion;

4. The amount of capital theretofore authorized, the proportion thereof actually issued and the amount of the increased capital stock.

If the corporation be a railroad corporation the certificate shall have indorsed thereon the approval of the public service commission having jurisdiction thereof. When the certificate herein provided for has been filed, the capital stock of such corporation shall be increased to the amount specified in such certificate.

§ 7. Validating corporate mortgages.

Whenever any mortgage affecting property or franchises within this state heretofore or hereafter executed by authority of the board of directors in behalf of any stock corporation, domestic or foreign, of any description, recites or represents in substance or effect that the execution of such mortgage has been duly consented to, or authorized by stockholders, such recital or representation in any such mortgage, after public record thereof within this state, shall be presumptive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law. After any such mortgage heretofore or hereafter shall have been publicly recorded for more than one year in one or more of the counties of this state containing the mortgaged premises or any part thereof, and the corporation shall have received value for bonds actually issued

under and secured by such mortgage, and interest shall have been paid on any of such bonds according to the terms thereof, such recital or representation of such mortgage so recorded shall be conclusive evidence that the execution of such mortgage has been duly and sufficiently consented to, and authorized by stockholders as required by any provision of law, and its validity shall not be impaired by reason of any defect or insufficiency of consent or authority of stockholders or in filing or recording such consent or authority, and such mortgage shall be valid and binding upon the corporation, and those claiming under it, as security for all valid bonds issued or to be issued thereunder, unless such mortgage shall be adjudged invalid in an action begun as hereinafter, in this section, provided. Notwithstanding the foregoing provisions of this section, the invalidity of any such mortgage heretofore recorded because of insufficiency of consent by stockholders may be adjudged in any action for such purpose begun before the first day of April, nineteen hundred and two, and the invalidity of any such mortgage hereafter recorded, because of insufficiency of consent by stockholders, may be adjudged in any action for such purpose begun, within one year after the earliest record of such mortgage in any county in this state, provided in either case that such action shall have been so begun by or in behalf of the corporation by direction of the board of directors acting in their own discretion, or upon the written request of the holders of not less than one-third of the capital stock of the corporation; and in any such action so begun by or in behalf of the corporation, the recitals or representations of the mortgage shall be presumptive evidence only as first above provided. Whenever hereafter, in compliance with any law of this state, the officers of any corporation shall have made and filed and recorded a certificate that the execution of a mortgage hereafter made by the corporation has been duly consented to by stockholders, such certificate shall be conclusive evidence as to the truth thereof, in favor of any and all persons who in good faith shall receive or purchase, for value, any bond or obligation purporting to be secured by such mortgage, at any time when said certificate shall remain of record and uncanceled. Nothing in this section contained shall affect any right or any

remedy in respect of any such right of any creditor accrued before this enactment nor shall it dispense with the necessity of obtaining the consent of the public service commission having jurisdiction thereof to any mortgage by a railroad corporation.

§ 8. Power to guarantee bonds of other corporations.

Any stock corporation may, in pursuance of a unanimous vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation, personally or by mail at his last-known post-office address at least sixty days prior to such meeting, guarantee the bonds of any other domestic corporation engaged in the same general line of business; and any stock corporation owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last-known post-office address, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.

§ 9. Reorganization upon sale of corporate property and franchises.

When the property and franchises of any domestic stock corporation shall be sold by virtue of a mortgage or deed of trust, duly executed by it, or pursuant to the judgment or decree of a court of competent jurisdiction, or by virtue of any execution issued thereon, and the purchaser, his assignee or grantee shall have acquired title to the same in the manner prescribed by law, he may associate with him any number of persons, not less than the number required by law for an incorporation for similar purposes at least two-thirds of whom shall be citizens of the United

States and one shall be a resident of this state, and they may become a corporation and take and possess the property and franchises thus sold, and which were at the time of the sale possessed by the corporation whose property shall have been so sold, upon making and acknowledging and filing in the offices where certificates of incorporation are required by law to be filed, a certificate in which they shall describe by name and reference to the law under which it was organized, the corporation whose property and franchises they have acquired, and the court by whose authority the sale had been made, with the date of the judgment or decree authorizing or directing the same, and a brief description of the property sold, and also the following particulars:

1. The name of the new corporation intended to be formed by the filing of such certificate; and the place where its principal office is to be located.

2. The maximum amount of its capital stock and the number of shares into which it is to be divided, specifying the classes thereof, whether common or preferred, and the amount of and rights pertaining to each class.

3. The number of directors, not less nor more than the number required by law for the old corporation, who shall manage the affairs of the new corporation, and the names and post-office addresses of the directors for the first year. They may insert in such certificate any provisions relating to the new corporation, or its management, contained in any plan or agreement which may have been entered into as provided in section ten of this chapter. Such corporation shall be vested with, and be entitled to exercise and enjoy, all the rights, privileges and franchises, which at the time of such sale belonged to, or were vested in the corporation last owning the property sold, or its receiver, and shall be subject to all the provisions, duties and liabilities imposed by law on that corporation. Any proceedings heretofore taken in substantial compliance with this section as hereby amended, and any and all incorporations based thereon are hereby ratified and confirmed.

§ 10. Contents of plan of agreement.

At or previous to the sale the purchasers thereat, or the persons for whom the purchase is to be made, may enter into a plan or agreement, for or in anticipation of the readjustment of the respective interests therein of any creditors, mortgagees, stockholders, or any of them, of the corporation owning such property and franchises at the time of sale, and of holders of claims for materials, supplies and equipment furnished, and for injuries and damages sustained, in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said corporation, and for the representation of such interests in the bonds or stock of the new corporation to be formed, and may therein regulate voting by the holders of the preferred and common stock at any meeting of the stockholders, and may provide for, and regulate voting by the holders, and owners of any or all of the bonds of the corporation, foreclosed, or of the bonds issued or to be issued by the new corporation; and such right of voting by bondholders shall be exercised in such manner, for such period, and upon such conditions, as shall be therein described. Such plan or agreement must not be inconsistent with the laws of the state and shall be binding upon the corporation, until changed as therein provided, or as otherwise provided by law. The new corporation when duly organized, pursuant to such plan or agreement and to the provisions of law, may issue its bonds and stock in conformity with the provisions of such plan or agreement, and may at any time within six months after its organization, compromise, settle or assume the payment of any debt, claim or liability of the former corporation or any claims for materials, supplies and equipment furnished, or any claims for injuries and damages sustained, in and about the operation, maintenance or construction of any or all the property formerly owned or leased to said corporation, upon such terms as may be lawfully approved by a majority of the agents or trustees intrusted with the carrying out of the plan or agreement of reorganization, and may establish preferences in favor of any portion of its capital stock and may divide its stock into classes; but the capital stock of the new corporation shall not exceed in the aggregate the maximum amount of stock mentioned in the certificate of incorporation. Amended by L. 1911, chap. 858.

§ 11. Sale of property; possession of receiver and suits against him.

The supreme court may direct a sale of the whole of the property, rights and franchises covered by the mortgage or mortgages, or deeds of trust foreclosed at any one time and place to be named in the judgment or order, either in case of the non-payment of interest only, or of both the principal and interest due and unpaid and secured by any such mortgage or mortgages or deeds of trust. Neither the sale nor the formation of the new corporation shall interfere with the authority or possession of any receiver of such property and franchises, but he shall remain liable to be removed or discharged at such time as the court may deem proper. No suit or proceeding shall be commenced against such receiver unless founded on wilful misconduct or fraud in his trust after the expiration of sixty days from the time of his discharge; but after the expiration of sixty days the new corporation shall be liable in any action that may be commenced against it, and founded on any act or omission of such receiver for which he may not be sued, and to the same extent as the receiver, but for this section would be or remain liable, or to the same extent that the new corporation would be had it done or omitted the acts complained of.

§ 12. Municipalities may assent to plan of readjustment.

The commissioners, corporate authorities or proper officers of any city, town or village, who may hold stock in any corporation, the property and franchises whereof shall be liable to be sold, may assent to any plan or agreement of reorganization which lawfully provides for the formation of a new corporation, and the issue of stock therein to the proper authorities or officers of such cities, towns or villages in exchange for the stock of the old or former corporation by them respectively held. And such commissioners, corporate authorities or other proper officers may assign, transfer or surrender the stock so held by them in the manner required by such plan, and accept in lieu thereof the stock issued by such new corporation in conformity therewith.

§ 13. Change of place of business.

Any stock corporation now existing or hereafter organized under the laws of this state, except moneyed corporations, may at any time change its principal office and place of business from the city, town or county named in its certificate of incorporation, or to which it may have been changed under the provisions of this section, to any other city, town or county in this state, in which it may desire to actually transact and carry on its regular business from day to day, provided that such change has been authorized, either by unanimous consent of the stockholders expressed in writing and duly acknowledged and filed in the office of the secretary of state, by a vote of the stockholders of said corporation at a special meeting of the stockholders called for that purpose, or such change has been effected by an act of legislature creating a separate and distinct county wholly within the limits and boundaries of a then existing county or counties. When such change shall be authorized by the stockholders or effected by the creation of a new county wholly within the limits and boundaries of the then existing county or counties as herein provided, the president and secretary and a majority of the directors of such corporation shall sign a certificate stating the name of said corporation, the city, town and county where its principal office and place of business was originally located, and to which it may have been subsequently changed, and the city, town and county to which it is desired to change its said principal office and place of business, and that it is the purpose of said corporation to actually transact and carry on its regular business from day to day at such place, and that such change has been authorized as herein provided, and the names of the directors of said corporation and their respective places of residence, which certificate shall be verified by the oaths of all the persons signing the same, and when so signed and verified, shall be filed in the office of the secretary of state and a duplicate thereof in the office of the clerk of the county from which said principal office and place of business is about to be removed or changed, and another in the office of the clerk of the county to which said removal or change is to be made, and thereupon the principal office and place of business of such corporation shall be changed as stated in said certificate.

Amended by L. 1915, chap. 117. In effect March 24, 1915.

§ 14. Combinations prohibited.

No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or

person for the creation of a monopoly or the unlawful restraint of trade or for the prevention of competition in any necessary of life.

§ 15. Merger.

Any domestic stock corporation and any foreign stock corporation authorized to do business in this state lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of state, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditors thereof. Any bridge corporation may be merged under this section with any railroad corporation which shall have acquired the right by contract to run its cars over the bridge of such bridge corporation.

§ 16. Voluntary sale of franchise and property.

A stock corporation, except a railroad corporation and except as otherwise provided by law, with the consent of two-thirds of its stock, may sell and convey its property, rights, privileges and franchises, or any interest therein or any part thereof to a domestic corporation, engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organizing under any general law of this state for a business of the same general character, and a domestic corporation the principal business of which is carried on in, and the principal tangible property of which is located within a state adjoining the state of New York, may with the consent of the holders of ninety-

five per centum of its capital stock, sell and convey its property situate without the state of New York, not including its franchises, to a corporation organized under the laws of such adjoining state, and such sale and conveyance shall, in case of a sale to a domestic corporation, vest the rights, property and franchises thereby transferred, and in case of a sale to a foreign corporation the property sold, in the corporation to which they are conveyed for the term of its corporate existence, subject to the provisions and restrictions applicable to the corporation conveying them. Before such sale or conveyance shall be made such consent shall be obtained at a meeting of the stockholders called upon like notice as that required for an annual meeting.

§ 17. Rights of non-consenting stockholders on voluntary sale of franchise and property.

If any stockholder not voting in favor of such proposed sale or conveyance shall at such meeting, or within twenty days thereafter, object to such sale, and demand payment for his stock, he may, within sixty days after such meeting, apply to the supreme court at any special term thereof held in the district in which the principal place of business of such corporation is situated, upon eight days' notice to the corporation, for the appointment of three persons to appraise the value of such stock, and the court shall appoint three such appraisers, and designate the time and place of their proceedings as shall be deemed proper, and also direct the manner in which payment for such stock shall be made to such stockholders. The court may fill any vacancy in the board of appraisers occurring by refusal or neglect to serve or otherwise. The appraisers shall meet at the time and place designated, and they or any two of them, after being duly sworn honestly and faithfully to discharge their duties, shall estimate and certify the value of such stock at the time of such dissent, and deliver one copy to such corporation, and another to such stockholder, if demanded; the charges and expenses of the appraisers shall be paid by the corporation. When the corporation shall have paid the amount of such appraisal, as directed by the court, such stockholders shall cease to have any interest in such stock and in the corporate property of such corporation and such stock may be held or disposed of by such corporation.

§ 18. Alterations or extension of business.

Any stock corporation heretofore or hereafter organized under any general or special law of this state may alter its certificate of incorporation so as to include therein any purposes, powers or provisions which at the time of such alteration may apply to corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a corporation organized under any general law of this state for a business of the same general character, by filing in the manner provided for the original certificate of incorporation an amended certificate, executed by the president and secretary, stating the alteration proposed, and that the same has been duly authorized by a vote of a majority of the directors and also by a vote of stockholders representing at least three-fifths of the capital stock, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three of this chapter, and a copy of the proceedings of such meeting, verified by the affidavit of one of the directors present thereat, shall be filed with such amended certificate.

§ 19. Issuance of shares of stock without nominal or par value.

Upon the formation or the reorganization of any stock corporation, other than a moneyed corporation, and other than a corporation under the jurisdiction of any public service commission, the certificate of incorporation may provide for the issuance of the shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value by stating in such certificate:

(1) The number of shares that may be issued by the corporation, and if any of such shares be preferred stock, the preferences thereof. If such preferred stock or any part thereof shall have a preference as to principal, the certificate shall state the amount of such preferred stock having such preference, the particular character of such preferences, and the amount of each share

thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars.

(2) The amount of capital with which the corporation will carry on business, which amount shall be not less than the amount of preferred stock (if any) authorized to be issued with a preference as to principal, and in addition thereto a sum equivalent to five dollars or to some multiple of five dollars for every share authorized to be issued other than such preferred stock; but in no event shall the amount of such capital be less than five hundred dollars.

Such statements in the certificate shall be in lieu of any statements prescribed by the law under which the corporation shall have been formed or reorganized as to the amount or the maximum amount of its capital stock or the number of shares into which the same shall be divided, or of the amount or the par value of such shares.

Each share of such stock without nominal or par value shall be equal to every other share of such stock, subject to the preferences given to the preferred stock if any authorized to be issued. Every certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the corporation is authorized to issue, and no such certificate shall express any nominal or par value of such shares. The certificates for preferred shares having a preference as to principal shall state briefly the amount which the holders of each of such preferred shares shall be entitled to receive on account of principal from the surplus assets of the corporation in preference to the holders of other shares, and shall state briefly any other rights or preferences given to the holders of such shares.

Such corporation may issue and may sell its authorized shares, from time to time, for such consideration as may be prescribed in the certificate of incorporation, or as from time to time may be fixed by the board of directors pursuant to authority conferred in

such certificate, or if such certificate shall not so provide, then by the consent of the holders of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as shall be prescribed by the by-laws. Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereof.

Added by L. 1912, chap. 351 (in effect April 15, 1912).

§ 20. Commencement of business; authorized debts.

No corporation formed pursuant to section nineteen hereof shall begin to carry on business or shall incur any debts until the amount of capital stated in its certificate of incorporation shall have been fully paid in money, or in property taken at its actual value. In case the amount of capital stated in its certificate of incorporation shall be increased as herein provided, such corporation shall not increase the amount of its indebtedness then existing until it shall have received in money or property the amount of such increase of its stated capital. The directors of the corporation assenting to the creation of any debt in violation of this section shall be liable jointly and severally for such debt; but no action shall be brought under the foregoing provision of this section unless within one year after the debt shall have been incurred the creditor shall have served upon the director written notice of intention to hold him personally liable for such debt. Any director who, because of any such liability under this section, shall pay any debt of the corporation, shall be subrogated to all rights of the creditor in respect thereof against the corporation and its property and also shall be entitled to contribution from all other directors of the corporation similarly liable for the same debt and the personal representative of any such director who shall have died before making such contribution.

No such corporation shall declare any dividend which shall reduce the amount of its capital below the amount stated in the cer-

tificate as the amount of capital with which the corporation will carry on business. In case any such dividend shall be declared, the directors in whose administration the same shall have been declared, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors at the time or who were not present when such action was taken, shall be liable jointly and severally to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or by its creditors respectively by reason of such dividend.

Added by L. 1912, chap. 351 (in effect April 15, 1912).

§ 21. Taxation.

The organization tax payable under section one hundred and eighty of the tax law by any corporation issuing such shares without designated monetary value shall be at the rate of five cents on each such share which the corporation is authorized to issue, and a like tax upon any subsequent increase thereof. The tax payable under section two hundred and seventy of the tax law in respect of any sale or agreement of sale or any memorandum of sale or delivery or transfers of shares or certificates of any share without designated monetary value hereafter issued by any such corporation issuing such shares shall be at the rate of two cents for each and every share of such stock so transferred. The franchise tax upon any corporation issuing such shares of stock payable under section one hundred and eighty-two of the tax law shall be determined by the amount of the gross assets of such corporation employed in any business within this state, less such proportion of its liabilities as shall represent the ratio of its gross assets employed in any business within this state to its entire gross assets wherever employed in business, and the rate of such franchise tax shall be fixed in the manner provided in said section one hundred and eighty-two of the tax law. For this purpose the rate of dividends shall be computed by dividing the total

amount of dividends which have been paid during the year by the amount of assets of the corporation upon the first day of such year.

Added by L. 1912, chap. 351 (in effect April 15, 1912).

§ 22. Increase or reduction of shares or capital.

Any corporation formed or reorganized pursuant to section nineteen may amend its certificate of incorporation so as to increase or to reduce the number of shares which it may issue, or so as to increase or to reduce the amount of its stated capital, by filing, in the manner provided for the original certificate of incorporation, a certificate of amendment under seal executed by its president or a vice-president and by its secretary or its treasurer, stating the amendment proposed and that the same has been duly authorized by a vote of a majority of the directors and also by the vote of the holders of at least three-fifths of the outstanding shares of each class issued by the corporation, at a meeting of the stockholders called for the purpose in the manner provided in section sixty-three hereof, and by filing with such certificate of amendment a copy of the proceedings of such meeting, made, signed, verified and acknowledged by the president or a vice-president and by the secretary or the treasurer of the corporation; but an amendment cannot be made under this section unless as so amended the certificate of incorporation could lawfully have been filed under section nineteen of this chapter. In case of a reduction of the amount of capital of a corporation, a certificate setting forth the whole amount of the ascertained debts and liabilities of the corporation shall be made, signed, verified and acknowledged by the president or a vice-president and by the secretary or the treasurer of the corporation and shall be filed with the certificate of amendment; and such certificate of amendment shall have endorsed thereon the approval of the comptroller to the effect that as so stated the reduced amount of capital is sufficient for the proper purposes of the corporation and is in excess of its ascertained debts and liabilities.

Added by L. 1912, chap. 351 (in effect April 15, 1912).

§ 23. Amount of capital stock and of shares within meaning of other laws.

For the purpose of any rule of law or of any statutory provision (other than the foregoing sections nineteen, twenty, twenty-one and twenty-two) relating to the amount of the capital stock of a corporation or the amount or par value of its shares, the aggregate amount of the capital stock of any such corporation formed pursuant to section nineteen hereof shall be deemed to be the aggregate amount specified in the certificate or amended certificate of incorporation or of reorganization as the amount of capital with which the corporation will carry on business; the amount or the par value of each share of preferred stock having a preference as to principal shall be deemed to be the amount thereof so specified in such certificate or such amended certificate; and the amount or the par value of each other share shall be deemed to be an aliquot part of the aggregate capital so specified in such certificate or in such amended certificate in excess of the specified amount (if any) of the preferred stock therein authorized to be issued with a preference as to principal.

Added by L. 1912 chap. 351 (in effect April 15, 1912).

ARTICLE 3.

DIRECTORS AND OFFICERS.

SECTION 25. Directors.

26. Change of number of directors.
27. When acts of directors void.
28. Liability of directors for making unauthorized dividends.
29. Liability of directors for loans to stockholders.
30. Officers.
31. Inspectors and their oath.
32. Books to be kept.
33. Stock books of foreign corporations.
34. Annual report to secretary of state.
35. Liability of officers for false certificates, reports or public notices.

§ 25. Directors.

The directors of every stock corporation shall be chosen at the time and place fixed by the by-laws of the corporation by a plurality of the votes at such election. Each director shall be a stockholder unless otherwise provided in the certificate, or in a by-law adopted by a stockholders' meeting. Vacancies in the board of directors shall be filled in the manner prescribed in the by-laws. Notice of the time and place of holding any election of directors shall be given by publication thereof, at least once in each week for two successive weeks immediately preceding such election, in a newspaper published in the county where such election is to be held, and in such other manner as may be prescribed in the by-laws. Policyholders of an insurance corporation shall be eligible to election as directors, whether or not they be stockholders. At least one-fourth in number of the directors of every stock corporation shall be elected annually.

§ 26. Change of number of directors.

The number of directors of any stock corporation may be increased or reduced, but not below the minimum number prescribed by law, when the stockholders owning a majority of the

stock of the corporation shall so determine, at a meeting to be held at the usual place of meeting of the directors, on two weeks' notice in writing to each stockholder of record. Such notice shall be served personally or by mail, directed to each stockholder at his last known post-office address. Proof of the service of such notice shall be filed in the office of the corporation at or before the time of such meeting. The proceedings of such meeting shall be entered in the minutes of the corporation and a transcript thereof verified by the president and secretary of the meeting shall be filed in the offices where the original certificates of incorporation were filed. Such increase or reduction may also be effected by unanimous consent without a meeting, in which case there shall be filed in the offices herein specified the unanimous consent of the stockholders in writing, signed by them, or their duly authorized proxies, but no such consent shall be valid unless there is annexed thereto an affidavit of the custodian of the stock book of such corporation stating that the persons who have signed such consent, either in person or by proxy, are the holders of record of the entire capital stock of said corporation issued and outstanding. If a corporation formed under or subject to the banking law, the consent of the superintendent of banks, and if an insurance corporation, the consent of the superintendent of insurance, shall be first obtained to such increase or reduction of the number of directors. This section shall apply to any stock corporation whether organized under a general or special law, and the number of directors may be increased as hereby provided notwithstanding the maximum number of directors now prescribed by law. If the number of directors be increased, the additional directors authorized by such increase shall be elected by the votes of a majority of the directors in office at the time of the increase. If the original or an amended certificate of incorporation of the corporation shall provide that the directors shall be divided into two or more classes, whose terms of office shall respectively expire at different times, the additional directors shall be divided among such classes as nearly as practicable in proportion to the respective numbers of directors constituting each class prior to such increase.

Amended by L. 1909, chap. 421.

§ 27. When acts of directors void.

When the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge upon it any liability or obligation for the services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.

§ 28. Liability of directors for making unauthorized dividends.

The directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw or in any way pay to the stockholders or any of them, any part of the capital of such corporation, or reduce its capital stock, except as authorized by law. In case of any violation of the provisions of this section, the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large upon the minutes of such directors at the time, or were not present when the same happened, shall jointly and severally be liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or its creditors respectively by reason of such withdrawal, division or reduction. But this section shall not prevent a division and distribution of the assets of any such corporation remaining after the payment of all its debts and liabilities upon the dissolution of such corporation or the expiration of its charter; nor shall it prevent a corporation from accepting shares of its capital stock in complete or partial settlement of a debt owing to the corporation, which by the board of directors shall be deemed to be bad or doubtful.

§ 29. Liability of directors for loans to stockholders.

No loan of moneys shall be made by any stock corporation, except a moneyed corporation, or by any officer thereof out of its funds to any stockholder therein, nor shall any such corporation or officer discount any note or other evidence of debt, or receive the same in payment of any instalment or any part thereof due or to become due on any stock in such corporation, or receive or discount any note, or other evidence of debt, to enable any stockholder to withdraw any part of the money paid in by him on his stock. In case of the violation of any provision of this section, the officers or directors making such loan, or assenting thereto, or receiving or discounting such notes or other evidences of debt, shall, jointly and severally, be personally liable to the extent of such loan and interest, for all the debts of the corporation contracted before the repayment of the sum loaned, and to the full amount of the notes or other evidences of debt so received or discounted, with interest from the time such liability accrued.

§ 30. Officers.

The directors of a stock corporation may appoint from their number a president, and may appoint a secretary, treasurer, and other officers, agents and employees, who shall respectively have such powers and perform such duties in the management of the property and affairs of the corporation, subject to the control of the directors, as may be prescribed by them or in the by-laws. The directors may require any such officer, agent or employee to give security for the faithful performance of his duties, and may remove him at pleasure. The policyholders of an insurance corporation shall be eligible to election or appointment as its officers.

§ 31. Inspectors and their oath.

The inspectors of election of every stock corporation shall be appointed in the manner prescribed in the by-laws, but the inspectors of the first election of directors and of all previous meetings of the stockholders shall be appointed by the board of directors named in the certificate of incorporation. No director or officer of a moneyed corporation shall be eligible to election or appoint-

ment as inspector. Each inspector shall be entitled to a reasonable compensation for his services, to be paid by the corporation, and if any inspector shall refuse to serve, or neglect to attend at the election, or his office become vacant, the meeting may appoint an inspector in his place unless the by-laws otherwise provide. The inspectors appointed to act at any meeting of the stockholders shall, before entering upon the discharge of their duties, be sworn to faithfully execute the duties of inspector at such meeting with strict impartiality, and according to the best of their ability, and the oath so taken shall be subscribed by them, and immediately filed in the office of the clerk of the county in which such election or meeting shall be held, with a certificate of the result of the vote taken thereat.

§ 32. Books to be kept.

Every stock corporation shall keep at its office correct books of account of all its business and transactions, and a book to be known as the stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. The stock book of every such corporation shall be open daily, during at least three business hours, for inspection by any judgment creditor of the corporation; or by any person who shall have been stockholder of record in such corporation for at least six months immediately preceding his demand; or by any person holding stock of such corporation to an amount equal to five per centum of all its outstanding shares; or by any person thereunto in writing authorized by the holders of stock of such corporation to an amount equal to five per centum of all of its outstanding shares. Persons so entitled to inspect stock books may make extracts therefrom. No transfer of stock shall be valid as against the corporation, its stockholders and creditors for any purpose except to render the transferee liable for the debts of the corporation to the extent provided for in this chapter, until it shall have been entered in such book as required by this section, by an entry showing from and to whom transferred. The stock book of every such corporation and the books

of account of every bank shall be presumptive evidence of the facts therein so stated in favor of the plaintiff, in any action or proceeding against such corporation or any of its officers, directors or stockholders. Every corporation that shall neglect or refuse to keep or cause to be kept such books, or to keep any book open for inspection as herein required, shall forfeit to the people the sum of fifty dollars for every day it shall so neglect or refuse. If any officer or agent of any such corporation shall wilfully neglect or refuse to make any proper entry in such book or books, or shall neglect or refuse to exhibit the same, or to allow them to be inspected and extracts taken therefrom as provided in this section, the corporation and such officer or agent shall each forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all damages resulting to him therefrom. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of stockholders of such corporation or of any other corporation, or has aided or abetted any person in procuring any stock list for any such purpose. Nothing herein impairs the power of the courts to compel by mandamus or judgment the production for examination by any stockholder of the stock books of a corporation.

Amended by L. 1916, chap. 127. In effect April 3, 1916.

§ 33. Stock books of foreign corporations.

Every foreign stock corporation having an office for the transaction of business in this state, except moneyed and railroad corporations, shall keep therein a book to be known as a stock book, containing the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof, and the amount paid thereon. Such stock book shall be open daily, during business hours, for inspection by any judgment creditor of such corporation; by any officer of this state authorized by law to investigate the affairs of any such corporation; by any person who shall have been stockholder of record in such corporation for at least six months immediately preceding his demand; by any person holding stock of such corporation to an amount equal to five per centum of all of its outstanding shares; or by

any person thereunto in writing authorized by the holders of stock of such corporation to an amount equal to five per centum of all of its outstanding shares. Persons so entitled to inspect stock books may make extracts therefrom. If any such foreign stock corporation has in this state a transfer agent, whether such agent shall be a corporation or a natural person, such stock book may be deposited in the office of such agent and shall be open to inspection at all times during the usual hours of transacting business, to any stockholder, judgment creditor or officer of the state authorized by law to investigate the affairs of such corporation. For any refusal to allow such book to be inspected, such corporation and the officer or agent so refusing shall each forfeit the sum of fifty dollars to be recovered by the person to whom such refusal was made. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of stockholders of such corporation or of any other corporation or has aided or abetted any person in procuring any stock list for any such purpose. Nothing herein impairs the power of the courts to compel by mandamus or judgment the production for examination by any stockholder of the stock books of a corporation.

Amended by L. 1916, chap. 127. In effect April 3, 1916.

§ 34. Annual report to secretary of state.

Every domestic stock corporation and every foreign stock corporation doing business within this state, except moneyed and railroad corporations, shall annually, during the month of January, or, if doing business without the United States, before the first day of May, may make a report as of the first day of January, which will state:

1. The amount of its capital stock, and the proportion actually issued.
2. The amount of its debts or an amount which they do not exceed.
3. The amount of its assets or an amount which its assets at least equal.
4. The names and addresses of all the directors and officers of the company, and in the case of a foreign corporation, the name also of the person designated in the manner prescribed by the

code of civil procedure, as a person upon whom process against the corporation may be served within this state.

Such report shall be made by the president or a vice-president or the treasurer or a secretary of the corporation and shall be filed in the office of the secretary of state. If such report be not so made and filed, any such officer who shall thereafter neglect or refuse to make and to file such report, within ten days after written request so to do shall have been made by a creditor or by a stockholder of the corporation, shall forfeit to the people the sum of fifty dollars for every day he shall so neglect or refuse.

§ 35. Liability of officers for false certificates, reports or public notices.

If any certificate or report made or public notice given by the officers or directors of a stock corporation shall be false in any material representation, the officers and directors signing the same shall jointly and severally be personally liable to any person who has become a creditor or stockholder of the corporation upon the faith of any such certificate, report, notice or any material representation therein to the amount of the debt contracted upon the faith thereof if not paid when due, or the damage sustained by any purchaser of or subscriber to its stock upon the faith thereof. The liability imposed by this section shall exist in all cases where the contents of any such certificate, report or notice or of any material representation therein shall have been communicated either directly or indirectly to the person so becoming a creditor or stockholder and he became such creditor or stockholder upon the faith thereof. No action can be maintained for a cause of action created by this section unless brought within two years from the time the certificate, report or public notice shall have been made or given by the officers or directors of such corporation.

ARTICLE 4.

STOCK AND STOCKHOLDERS.

SECTION 50. Issue and transfers of stock.

51. Transfers of stock by stockholder indebted to corporation.
52. Purchase of stock of other corporations.
53. Subscriptions to stock.
54. Time of payment of subscriptions to stock.
55. Consideration for issue of stock and bonds.
56. Liabilities of stockholders.
57. Liabilities of stockholders to laborers, servants or employees.
58. Non-liability in certain cases.
59. Limitation of stockholder's liability.
60. Partly paid stock.
61. Preferred and common stock.
62. Increase or reduction of capital stock.
63. Notice of meeting to increase or reduce capital stock.
64. Conduct of such meeting; certificate of increase or reduction.
65. Change in par value of shares.
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§ 50. Issue and transfers of stock.

The stock of every stock corporation shall be represented by certificates prepared by the directors and signed by the president or vice-president and secretary or treasurer and sealed with the seal of the corporation, and shall be transferable in the manner prescribed in this chapter and in the by-laws. No share shall be transferable until all previous calls thereon shall have been fully paid in.

§ 51. Transfers of stock by stockholder indebted to corporation.

If a stockholder shall be indebted to the corporation, the directors may refuse to consent to a transfer of his stock until such indebtedness is paid, provided a copy of this section is written or printed upon the certificate of stock.

§ 52. Purchase of stock of other corporations.

Any stock corporation, domestic or foreign, now existing or hereafter organized, except moneyed corporations, may purchase, acquire, hold and dispose of the stocks, bonds and other evidences of indebtedness of any corporation, domestic or foreign, and issue in exchange therefor its stock, bonds or other obligations if authorized so to do by a provision in the certificate of incorporation of such stock corporation, or in any certificate amendatory thereof or supplementary thereto, filed in pursuance of law, or if the corporation whose stock is so purchased, acquired, held or disposed of, is engaged in a business similar to that of such stock corporation, or engaged in the manufacture, use or sale of the property, or in the construction or operation of works necessary or useful in the business of such stock corporation, or in which or in connection with which the manufactured articles, product or property of such stock corporation are or may be used, or is a corporation with which such stock corporation is or may be authorized to consolidate. When any such corporation shall be a stockholder in any other corporation, as herein provided, its president or other officers shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers and privileges of individual owners or holders of such stock.

§ 53. Subscriptions to stock.

If the whole capital stock shall not have been subscribed at the time of filing the certificate of incorporation, the directors named in the certificate may open books of subscription to fill up the capital stock in such places and after giving such notices as they may deem expedient, and may continue to receive subscriptions until the whole capital stock is subscribed. At the time of subscribing, every subscriber, whose subscription is payable in money, shall pay to the directors ten per centum upon the amount subscribed by him in cash, and no such subscription shall be received or taken without such payment.

§ 54. Time of payment of subscriptions to stock.

Subscriptions to the capital stock of a corporation shall be paid at such times and in such instalments as the board of directors may by resolution require. If default shall be made in the payment of any instalment as required by such resolution, the board may declare the stock and all previous payments thereon forfeited for the use of the corporation, after the expiration of sixty days from the service on the defaulting stockholder, personally, or by mail directed to him at his last-known post-office address, of a written notice requiring him to make payment within sixty days from the service of the notice at a place specified therein, and stating that, in case of failure to do so, his stock and all previous payments thereon will be forfeited for the use of the corporation.

Such stock, if forfeited, may be reissued or subscriptions therefor may be received as in the case of stock not issued or subscribed for. If not sold for its par value or subscribed for within six months after such forfeiture, it shall be canceled and deducted from the amount of the capital stock. If by such cancellation, the amount of the capital stock is reduced below the minimum required by law, the capital stock shall be increased to the required amount within three months thereafter or an action may be brought or proceedings instituted to close up the business of the corporation as in the case of an insolvent corporation. If a receiver of the assets of the corporation has been appointed, all unpaid subscriptions to the stock shall be paid at such times and in such instalments as the receiver or the court may direct.

§ 55. Consideration for issue of stock and bonds.

No corporation shall issue either stock or bonds except for money, labor done or property actually received for the use and lawful purposes of such corporation. Any corporation may purchase any property authorized by its certificate of incorporation, or necessary for the use and lawful purposes of such corporation, and may issue stock to the amount of the value thereof in payment therefor, and the stock so issued shall be full paid stock and not liable to any further call, neither shall the holder thereof

be liable for any further payment under any of the provisions of this chapter; and in the absence of fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive; and in all statements and reports of the corporation, by law required to be published or filed, this stock shall not be stated or reported as being issued for cash paid to the corporation, but shall be reported as issued for property purchased.

§ 56. Liabilities of stockholders.

Every holder of capital stock not fully paid, in any stock corporation, shall be personally liable to its creditors, to an amount equal to the amount unpaid on the stock held by him for debts of the corporation contracted while such stock was held by him. As to existing corporations the liability imposed by this section shall be in lieu of the liability imposed upon stockholders of any existing corporation, under any general or special law, excepting laws relating to moneyed corporations, and corporations and associations for banking purposes, on account of any indebtedness hereafter contracted or any stock hereafter issued; but nothing in this section contained shall create or increase any liability of stockholders of any existing corporation under any general or special law.

§ 57. Liabilities of stockholders to laborers, servants or employees.

The stockholders of every stock corporation shall jointly and severally be personally liable for all debts due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing, within thirty days after the termination of such services, that he intends to hold him liable, and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services.

§ 58. Non-liability in certain cases.

No person holding stock in any corporation as collateral security, or as executor, administrator, guardian or trustee, unless he shall have voluntarily invested the trust funds in such stock, shall be personally subject to liability as a stockholder; but the person pledging such stock shall be considered the holder thereof and shall be liable as stockholder, and the estates and funds in the hands of such executor, administrator, guardian or trustee shall be liable in the like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been, if he had been living and competent to act and held the same stock in his own name, unless it appears that such executor, administrator, guardian or trustee voluntarily invested the trust funds in such stocks, in which case he shall be personally liable as a stockholder.

§ 59. Limitation of stockholder's liability.

No action shall be brought against a stockholder for any debt of the corporation until judgment therefor has been recovered against the corporation, and an execution thereon has been returned unsatisfied in whole or in part, and the amount due on such execution shall be the amount recoverable, with costs against the stockholder. No stockholder shall be personally liable for any debt of the corporation not payable within two years from the time it is contracted, nor unless an action for its collection shall be brought against the corporation within two years after the debt becomes due; and no action shall be brought against a stockholder after he shall have ceased to be a stockholder, for any debt of the corporation, unless brought within two years from the time he shall have ceased to be a stockholder.

§ 60. Partly paid stock.

The original or the amended certificate of incorporation of any stock corporation may contain a provision expressly authorizing the issue of the whole or of any part of the capital stock as partly paid stock, subject to calls thereon until the whole thereof shall have been paid in. In such case, if in or upon the certificate

issued to represent such stock, the amount paid thereon shall be specified, the holder thereof shall not be subject to any liability except for the payment to the corporation of the amount remaining unpaid upon such stock, and for the payment of indebtedness to employees pursuant to sections fifty-seven, fifty-eight and fifty-nine of this chapter; and in any such case, the corporation may declare and may pay dividends upon the basis of the amount actually paid upon the respective shares of stock instead of upon the par value thereof.

§ 61. Preferred and common stock.

Every domestic stock corporation may issue preferred stock and common stock and different classes of preferred stock, if the certificate of incorporation so provides, or by the consent of the holders of record of two-thirds of the capital stock, given at a meeting called for that purpose upon notice such as is required for the annual meeting of the corporation. A certificate of the proceedings of such meeting, signed and sworn to by the president or a vice-president, and by the secretary or assistant secretary, of the corporation, shall be filed and recorded in the offices where the original certificate of incorporation of such corporation was filed and received; and the corporation may, upon the written request of the holders of any preferred stock, by a two-thirds vote of its directors, exchange the same for common stock, and issue certificates for common stock therefor, upon such valuation as may have been agreed upon in the certificate of organization of such corporation, or the issue of such preferred stock, or share for share, but the total amount of such capital stock shall not be increased thereby.

§ 62. Increase or reduction of capital stock.

Any domestic corporation may increase or reduce its capital stock in the manner herein provided, but not above the maximum or below the minimum, if any, prescribed by general law governing corporations formed for similar purposes. If increased, the holders of the additional stock issued shall be subject to the same liabilities with respect thereto as are provided by law in relation

to the original capital; if reduced, the amount of its debts and liabilities shall not exceed the amount of its reduced capital, unless an insurance corporation, in which case the amount of its debts and liabilities shall not exceed the amount of its reduced capital and other assets. The owner of any stock shall not be relieved from any liability existing prior to the reduction of the capital stock of any stock corporation. If a banking corporation, whether the capital be increased or reduced, its assets shall at least be equal to its debts and liabilities and the capital stock, as increased or reduced. A domestic railroad corporation may increase or reduce its capital stock in the manner herein provided, notwithstanding any provision contained herein, or in any general or special law fixing or limiting the amount of capital stock which may be issued by it.

§ 63. Notice of meeting to increase or reduce capital stock.

Every such increase or reduction must be authorized either by the unanimous consent of the stockholders, expressed in writing and filed in the office of the secretary of state and in the office of the clerk of the county in which the principal business office of the corporation is located, or by a vote of the stockholders owning at least a majority of the stock of the corporation, taken at a meeting of the stockholders specially called for that purpose in the manner provided by law or by the by-laws. Notice of the meeting, stating the time, place and object, and the amount of the increase or reduction proposed, signed by the president or a vice-president and the secretary, shall be published once a week, for at least two successive weeks, in a newspaper in the county where its principal business office is located, if any is published therein, and a copy of such notice shall be duly mailed to each stockholder or member at his last-known post-office address at least two weeks before the meeting or shall be personally served on him at least five days before the meeting.

§ 64. Conduct of such meeting; certificate of increase or reduction.

If, at the time and place specified in the notice, the stockholders shall appear in person or by proxy in numbers representing at

least a majority of all the shares of stock, they shall organize by choosing from their number a chairman and secretary, and take a vote of those present in person or by proxy, and if a sufficient number of votes shall be given in favor of such increase or reduction, or if the same shall have been authorized by the unanimous consent of stockholders expressed in writing signed by them or their duly authorized proxies, a certificate of the proceedings showing a compliance with the provisions of this chapter, the amount of capital theretofore authorized, and the proportion thereof actually issued, and the amount of the increased or reduced capital stock, and in case of the reduction of capital stock the whole amount of the ascertained debts and liabilities of the corporation, shall be made, signed, verified and acknowledged by the chairman and secretary of the meeting, and filed in the office of the clerk of the county where its principal place of business shall be located, a duplicate thereof in the office of the secretary of state, and, if a corporation formed under or subject to the banking law, a triplicate thereof in the office of the superintendent of banks, and if an insurance corporation, a triplicate thereof in the office of the superintendent of insurance. In case of a reduction of the capital stock, except of a railroad corporation or a moneyed corporation, such certificate or consent hereinafter provided for shall have indorsed thereon the approval of the comptroller, to the effect that the reduced capital is sufficient for the proper purposes of the corporation, and is in excess of its ascertained debts and liabilities; and in case of the increase or reduction of the capital stock of a railroad corporation or a moneyed corporation, the certificate or the unanimous consent of stockholders, as the case may be, shall have indorsed thereon the approval of the public service commission having jurisdiction thereof, if a railroad corporation; of the superintendent of banks, if a corporation formed under or subject to the banking law, and of the superintendent of insurance, if an insurance corporation. When the certificate herein provided for, or the unanimous consent of stockholders in writing, signed by them or their duly authorized proxies, approved as aforesaid, has been filed, the capital stock of such corporation shall be increased or reduced, as the case may be, to the amount specified in such certificate or consent. The

proceedings of the meeting at which such increase or reduction is voted, or, if such increase or reduction shall have been authorized by unanimous consent without a meeting, then a copy of such consent shall be entered upon the minutes of the corporation. If the capital stock is reduced, the amount of capital over and above the amount of the reduced capital shall, if the meeting or consents so determine or provide, be returned to the stockholders pro rata, at such times and in such manner as the directors shall determine, except in the case of the reduction of the capital stock of an insurance corporation, as an alternative to make good an existing impairment.

Amended by L. 1913, chap. 305.

§ 65. Change in par value of shares.

The number of shares into which the capital stock of any stock corporation is divided may be increased or reduced by a two-thirds vote of all stock duly represented at a meeting held and conducted in like manner, and upon filing a like certificate, as required for the increase or reduction of its capital stock. If such increase or reduction of the number of shares be so authorized, the corporation shall issue to each stockholder certificates for as many shares of the new stock as equal in par value the shares of the old stock held by him, upon surrender and cancellation of such old stock. This section does not authorize the increase or reduction of the capital stock of such corporation.

§ 66. Prohibited transfers to officers or stockholders.

No corporation which shall have refused to pay any of its notes or other obligations, when due, in lawful money of the United States, nor any of its officers or directors, shall transfer any of its property to any of its officers, directors or stockholders, directly or indirectly, for the payment of any debt, or upon any other consideration than the full value of the property paid in cash. No conveyance, assignment or transfer of any property of any such corporation by it or by any officer, director or stockholder thereof, nor any payment made, judgment suffered, lien created or security given by it or by any officer, director or stockholder

when the corporation is insolvent or its insolvency is imminent, with the intent of giving a preference to any particular creditor over other creditors of the corporation, shall be valid, except that laborers' wages for services shall be preferred claims and be entitled to payment before any other creditors out of the corporation assets in excess of valid prior liens or incumbrances. No corporation formed under or subject to the banking, insurance or railroad law shall make any assignment in contemplation of insolvency. Every person receiving by means of any such prohibited act or deed any property of the corporation shall be bound to account therefor to its creditors or stockholders or other trustees. No stockholder of any such corporation shall make any transfer or assignment of his stock therein to any person in contemplation of its insolvency. Every transfer or assignment or other act done in violation of the foregoing provisions of this section shall be void. No conveyance, assignment or transfer of any property of a corporation formed under or subject to the banking law, exceeding in value one thousand dollars, shall be made by such corporation, or by any officer or director thereof, unless authorized by previous resolution of its board of directors, except promissory notes or other evidences of debt issued or received by the officers of the corporation in the transaction of its ordinary business, and except payments in specie or other current money or in bank bills made by such officers. No such conveyance, assignment or transfer shall be void in the hands of a purchaser for a valuable consideration without notice. Every director or officer of a corporation who shall violate or be concerned in violating any provisions of this section, shall be personally liable to the creditors and stockholders of the corporation of which he shall be director or an officer to the full extent of any loss they may respectively sustain by such violation.

§ 67. Application to court to order issue of new in place of lost certificate of stock.

The owner of a lost or destroyed certificate of stock, if the corporation shall refuse to issue a new certificate in place thereof, may apply to the supreme court, at any special term held in the

district where he resides, or in which the principal business office of the corporation is located, for an order requiring the corporation to show cause why it should not be required to issue a new certificate in place of the one lost or destroyed. The application shall be by petition, duly verified by the owner, stating the name of the corporation, the number and date of the certificate, if known, or if it can be ascertained by the petitioner; the number of shares named therein, to whom issued, and as particular a statement of the circumstances attending such loss or destruction as the petitioner can give. Upon the presentation of the petition the court shall make an order requiring the corporation to show cause, at a time and place therein mentioned, why it should not issue a new certificate of stock in place of the one described in the petition. A copy of the petition and order shall be served on the president or other head of the corporation, or on the secretary or treasurer thereof, personally, at least ten days before the time for showing cause.

§ 68. Order of court upon such application.

Upon the return of the order, with proof of due service thereof, the court shall, in a summary manner, and in such mode as it may deem advisable, inquire into the truth of the facts stated in the petition, and hear the proofs and allegations of the parties in regard thereto, and if satisfied that the petitioner is the lawful owner of the number of shares, or any part thereof, described in the petition, and that the certificate therefor has been lost or destroyed, and can not after due diligence be found, and that no sufficient cause has been shown why a new certificate should not be issued, it shall make an order requiring the corporation, within such time as shall be therein designated, to issue and deliver to the petitioner a new certificate for the number of shares specified in the order, upon depositing such security, or filing a bond in such form and with such sureties as to the court shall appear sufficient to indemnify any person other than the petitioner who shall thereafter be found to be the lawful owner of the certificate lost or destroyed; but such provision requiring security to be deposited or bond filed is to be construed as excluding an application

made by a domestic municipal corporation or by a public officer in behalf of such corporation; and the court may direct the publication of such notice, either before or after making such order as it shall deem proper. Any person claiming any rights under the certificates alleged to have been lost or destroyed shall have recourse to such indemnity, but in any application under the provisions of this chapter, in which a domestic municipal corporation or a public officer in behalf of such corporation, shall be by the foregoing provisions of this section excused from depositing security or filing a bond, such municipal corporation shall be liable for all damages that may be sustained by any person, in the same case and to the same extent as sureties to a bond or undertaking would have been, if such a bond or undertaking had been filed; and the corporation issuing such certificate shall be discharged from all liability to such person upon compliance with such order; and obedience to the order may be enforced by attachment against the officer or officers of the corporation on proof of his or their refusal to comply with it.

§ 69. Financial statement to stockholders.

Stockholders owning five per centum of the capital stock of any corporation other than a moneyed corporation, not exceeding one hundred thousand dollars, or three per centum where it exceeds one hundred thousand dollars, may make a written request to the treasurer or chief fiscal officer thereof, for a statement of its affairs, under oath, embracing a particular account of all its assets and liabilities, and the treasurer shall make such statement and deliver it to the person presenting the request within thirty days thereafter, and keep on file for twelve months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder demanding an examination thereof; but the treasurer or such chief fiscal officer shall not be required to deliver more than one such statement in any one year. The supreme court, or any justice thereof, may upon application, for good cause shown, extend the time for making and delivering such certificate. For every neglect or refusal of the treasurer or other chief fiscal officer thereof to comply with the provisions of

this section he shall forfeit and pay to the person making such request the sum of fifty dollars, and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished.

§ 70. Liabilities of officers, directors and stockholders of foreign corporations.

Except as otherwise provided in this chapter the officers, directors and stockholders of a foreign stock corporation transacting business in this state, except moneyed and railroad corporations, shall be liable under the provisions of this chapter, in the same manner and to the same extent as the officers, directors and stockholders of a domestic corporation, for:

1. The making of unauthorized dividends;
2. Unlawful loans to stockholders;
3. Making false certificates, reports or public notices;
4. An illegal transfer of the stock and property of such corporation, when it is insolvent or its insolvency is threatened;
5. The failure to file an annual report.

Such liabilities may be enforced in the courts of this state, in the same manner as similar liabilities imposed by law upon the officers, directors and stockholders of domestic corporations.

ARTICLE 5.

LAWS REPEALED; WHEN TO TAKE EFFECT.

SECTION 80. Laws repealed.

81. When to take effect.

§ 80. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 81. When to take effect.

This chapter shall take effect immediately.

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